00078549

00078549

Digitized with financial assistance from
Shri Brihad Bhartiya Samaj
on 11 March, 2020

Col.

Dewan Singh *v.* Queen-Empress, 22 Calc. 805 ... ... 1184, 1188
Dhani Ram Mahta *v.* Luchmeswar Singh, 23 Calc. 639 161
Dhani Ram Shaha *v.* Bhagirath Shaha, 22 Calc. 692 ... ... 930, 1093, 1295
Dhanmull *v.* Ram Chunder Ghose, 24 Calc. 265 ... ... 395, 833
Dharam Chand Lal *v.* Bhawani Misrain, L. R. 24 I. A. 183; 25 Calc. 189 .. 473
Dharam Chand Lal *v.* Queen-Empress, 22 Calc. 596 940
Dharamdas Sambhudas *v.* Hafasji, 19 Bom. 250 ... ... 461, 800
Dharma *v.* Balmakund, 18 All. 458 ... 690
Dharmaya Sangappa *v.* Sayana Malapa, 21 Bom. 53 139
Dharnidhar *v.* Chinto, 20 Bom. 250 ... 470
Dhiraj Singh *v.* Manga Ram, 19 All. 300 ... 473
Dhondi *v.* Lakshman, 19 Bom. 553 ... 349
Dhondo Balkrishna Kanitkar *v.* Raoji, 20 Bom. 290 ... ... 380, 857
Dhoroney Dhur Ghose *v.* Radha Gobindkar, 24 Calc. 117 574
Dhuman Khan *v.* Muhammad Khan, 19 All. 153 1129
Dhundiraj Ganesh Dev *v.* Ganesh, 18 Bom. 721 ... ... 228, 1124
Dhunpat Singh, In re, 20 Calc. 77 ... 570
Dhunpat Singh *v.* Mahomed Kazim Ispahain, 24 Calc. 296 640
Dhunput Singh *v.* Paresh Nath Singh, 21 Calc. 180 916
Dijendranath Roy Chowdhry *v.* Soylendra Nath Roy Chowdhry, 24 Calc. 197 ... 103
Din Dayal *v.* Patra Khan, 18 All. 481 ... 1208
Din Dial *v.* Har Narain, 16 All. 73 ... 717
Dinkar *v.* Appaji, 20 Bom. 153 ... 501, 689
Dinshaw Nowroji, Bode *v.* Nowroji Nasarwanji Bode, 20 Bom. 46 1288
Dip Narain Singh *v.* Hira Singh, 19 All. 527 853
Diwan Singh *v.* Jadho Singh, 19 All. 145 ... 1052
Dobson and Barlow *v.* Bengal Spinning and Weaving Co., 21 Bom. 126 ... 605, 1190
Dodhu *v.* Madhavrao Narayan Gadre, 18 Bom. 110 ... ... 60, 651, 1214
Donaghue, In the Matter of, 19 Bom. 232 ... 562
Doorga Mohun Dass *v.* Tahir Ally, 22 Calc. 270 988
Dorabji Jehangir Randiva *v.* Muncherji Bomanji Panthaki, 19 Bom. 352 ... 705
Doshi Fulchand *v.* Malek Dajiraj, 20 Bom. 565 ... ... 334, 407
Dukhi Mullah *v.* Halway, 23 Calc. 55. 364, 978, 981, 1231
Dukhna Kunwar *v.* Unkar Pande, 19 All. 452 621
Duncan *v.* Bhoyro Prosad, 22 Calc. 891 ... 573
Dunia Lal Seal *v.* Gopi Nath Khetry, 22 Calc. 820 654
Dupeyron *v.* Driver, 23 Calc. 495 ... 1262
Durga Charan Laskar *v.* Hari Churn Das, 21 Calc. 521 102
Durga Dihal Das *v.* Anoraji, 17 All. 29 ... 1065
Durga Singh *v.* Nauraug Singh, 17 All. 382 866
Dwarka Das *v* Kameshar Prasad, 17 All. 69 1296
Dwarka Das *v.* Sant Baksh, 18 All. 92 ... 333
Dwarkadas Parshotamdas *v.* Isabhai Daudkhan, 19 Bom. 210 1250
Dwarkanath Appaji *v.* Anandrao Ramchandra, 20 Bom. 179... ...
Dwarkanath Dutt *v.* Addya Sundari Mitr, 21 Calc. 319 ... ...
Dwarkanath Misser *v.* Barinda Nath Misser, 22 Calc. 425 ... ...
Dwarkojirav Baburav *v.* Balkrishna Bhalchandra, 19 Bom. 255 ... ...

Eacharan Patter *v.* Appu Patter, 19 Mad. 16 1294
East Indian Railway Co. *v.* Bunyad Ali, 18 All. 42 1028
Elgin Mills Co. *v.* Muir Mills Co., 17 All. 490 586
Emile *v.* Abdul Rahman, 16 All. 69 ... 1000
Erava *v.* Sidramappa Pasare, 21 Bom. 424 .. 1162
Eshoor Doss *v.* Venkatasubba Rau, 17 Mad. 480 ... ... 247, 391
Eshoor Doss *v.* Venkatasubba Rau, 18 Mad. 306 247
Esoof Hasshim Dooply *v.* Fatima Bibi *alias* Mah Poh, 24 Calc. 30 53
Essa Sulleman *v.* Dayabhai Parmanandas, 20 Bom. 522 ... ... 1268, 1309

Faez Rahaman *v.* Ramsukh Bajpai, 21 Calc. 169 1142
Faizuddin Ali Khan *v.* Tincowri Saha, 22 Calc. 565 469
Faki Gulam Mohidin *v.* Sajnak, 18 Bom. 244 ... ... 633, 699
Fakire *v.* Tasadduq Husain, 19 All. 462 ... 258
"Falls of Ettrick," In the Matter of the British Ship, 22 Calc. 511 987
Fannyamma *v.* Manjaya Hebbar, 21 Bom. 159 726
Farkan *v.* Somsher Mahomed, 22 Calc. 241 ... 595
Farzand Ali *v.* Hanuman Prasad, 18 All. 465 224
Farzand Ali *v.* Hanuman Prasad, 19 All. 64 1262
Fateh Chand *v.* Muhammad Baksh, 16 All. 259 134
Fatehchand Harchaud *v.* Kisan, 18 Bom. 614 ... ... 387, 690, 1223
Fatesangji Jasvatsangji *v.* Kuvar Harisangji Fatesangji, 20 Bom. 181 ... 260, 486, 509
Fatimunnissa *alias* Kanez Fatima *v.* Deoki Pershad, 24 Calc. 350 1107
Fatmabai *v.* Pirbhai Virji, 21 Bom. 580 ... 694
Fauji Lal *v.* Changa Mal, 19 All 513 ... 1197
Fazulbhoy Mehrali Chinoy *v.* Bombay and Persia Steam Navigation Co., 20 Bom. 232 64
Fernandez *v.* Rodrigues, 21 Bom. 784 ... 917
Fischer *v.* Secretary of State for India, 19 Mad. 292 771
Foolkissory Dassee *v.* Nobin Chunder Bhunjo, 23 Calc. 441 395
Framji Bhicaji *v.* Mohansing Dhansing, 18 Bom. 263 1005
Framji Dorabji Ghaswala *v.* Adarji Dorabji Ghaswala, 18 Bom. 337 1130

Gajendar Singh *v.* Sardar Singh, 18 All. 176 498
Gajpat Rai *v.* Chimman Rai, 16 All. 189 ... 722
Gajraj Puri *v.* Achaibar Puri, 16 All. 191; L. R. 21 I. A. 17 486
Galstaun *v.* Short, 23 Calc. 702 586
Gambhirmal *v.* Hamirmal, 21 Bom. 747 .. 507

Col.

Bhatta *v.* Bharati Swami, 17 Mad. 476, 611
...as Ramnarayan *v.* Lachminarayan, ...5 Bom. 570 546
...eshi Lal *v.* Khairati Singh, 16 All. 279 ... 868
...eshi Lal *v.* Musarrat Ali, 16 All. 234 41, 564
...nesh Jagannath Dev. *v.* Ramchandra Ganesh Dev, 21 Bom. 563 1079
Ganesh Lala *v.* Bapu, 21 Bom. 198 ... 381
Ganesh Mahadeo Bhandarkar *v.* Ramchandra Sambhaji Mhaskar, 20 Bom. 557 ... 725
Ganesh Vithal *v.* Shripad Dattoba Naik, 20 Bom. 668 122
Ganga Baksh *v.* Jagat Bahadur Singh, 23 Calc. 15; L. R. 22 I. A. 153 449
Ganga Charan Sen *v.* Queen-Empress, 21 Calc. 337 375
Ganga Dei *v.* Sher Singh, 17 All. 51 ... 1179
Gangadhar Hari Karkare *v.* Morbhat Purohit, 18 Bom. 525 ... ... 117, 618
Gangadhar Raghunath Joshi *v.* Damodar Mohanlal, 21 Bom. 522 250
Gangadharrao Venkatesh *v.* Shidramapa Balapa Desai, 18 Bom. 586 688
Ganga Narain *v.* Municipal Board of Cawnpore, 19 All. 313 882
Ganga Pershad Sahu *v.* Land Mortgage Bank, 21 Calc. 366; L. R. 21 I. A. 1 ... 579
Ganga Prasad *v.* Chunni Lal, 18 All. 113 ... 335
Ganga Prasad *v.* Lal Bahadur Singh, 17 All. 117 1065
Gangaraju *v.* Kondireddiswami, 17 Mad. 106 1097
Gangaram *v.* Punamchand Nathuram, 21 Bom. 822 1230
Gangaram Chimna Patel *v.* Secretary of State for India, 20 Bom. 798 323, 974
Gangaram Kushaba Rangole *v.* Narayan Babaji Rangole, 19 Bom. 32 ... 1224
Gangava *v.* Sayava, 21 Bom. 699 ... 1056
Ganpat *v.* Narayan. 21 Bom. 619 ... 853
Ganpati *v* Gangaram, 21 Bom. 381 ... 1147
Gantapalli Appalamma *v.* Gantapalli Yellayya, 20 Mad. 470 ... 807
Gavdappa *v.* Girimallappa, 19 Bom. 331. 61, 466, 468, 1215
Gavrishankar Parabhuram *v.* Atmaram Rajaram, 18 Bom. 611 ... 516, 1126
Genda Mal *v.* Pirbhu Lal, 17 All 97 ... 35
Ghamandi Lal *v.* Amir Begam, 16 All. 211 ... 3, 920
Ghanasham Nilkant Nadkarni *v.* Moroba Ramchandra Pai, 18 Bom. 474 273, 999
Ghanshiam Singh *v.* Daulat Singh, 18 All. 240 578
Ghasiti *v.* Jaggu, 21 Calc. 149; L. R. 20 I. A. 193 790
Ghasiti *v.* Umrao Jan, 21 Calc. 149; L. R. 20 I. A. 193 790
Ghazi *v.* Sukru, 19 All. 515 512
Ghela Ichharam *v.* Sankalchand Jetha, 18 Bom. 597 1088
Ghellabhai Atmaram *v.* Nandubai, 20 Bom. 238 ... ... 64, 393, 608
Ghellabhai Atmaram *v.* Nandubai, 21 Bom. 335 ... ... 64, 393, 608
Ghulam Kadir Khan *v.* Mustakim Khan, 18 All. 109 ... ... 60, 914

Col.

Ghulam Muhammad *v.* Himalaya Bank, 17 All. 292 ... ... 955, 958
Ghulam Shabbir *v.* Dwarka Prasad, 18 All. 36 40
Ghulam Shabbir *v.* Dwarka Prasad, 18 All. 163 1242
Ghure *v.* Man Singh, 17 All. 296 ... 994
Giridhar Chatterjee *v.* Ebadullah Naskar, 22 Calc. 384 982
Girdharlal Hargovandas *v.* Lallu Jagjivan, 20 Bom. 50 1241
Girijanund Datta Jha *v.* Sailajanund Datta Jha, 23 Calc. 645 ... 251, 482, 714, 1300
Girish Chundra Basu *v.* Apurba Krishna Dass, 21 Calc. 940 405
Girish Myte *v.* Queen-Empress, 23 Calc. 420 596, 943
Girwar Lal *v.* Musarrat Ali, 16 All. 234 ... ... 41, 564
Gnanamuthu Upadesi *v.* Vana Koilpillai Nadan, 17 Mad. 379 746
Gnanasambanda Pandara Sannadhi *v.* Velu Pandaram, 19 Mad. 243 742
Gnanasammanda Pandaram *v.* Palaniyandi Pillai, 17 Mad. 61 695
Gobardhan *v.* Sujan, 16 All. 254 ... 975
Goberdhan Singh *v.* Ritu Roy, 23 Calc. 962 85
Gobind Chunder Nundy *v.* Srigobind Chowdhry, 24 Calc. 330 ... 259, 1095
Gobind Lal *v.* Rung Lal, 21 Calc. 23 ... 753
Gobind Lal Roy *v.* Ramjanam Misser, 21 Calc. 70; L. R. 20 I. A. 165 ... 1148
Gobind Pershad *v.* Rung Lal, 21 Calc. 23 ... 753
Goculdas Muccanji *v.* Vassanji Jairam, 19 Bom. 12 319
Gokal Chand *v.* Sarat Chandra Singh, 18 All. 285 923
Gokulbhoy Mulchand *v.* Tullockchand Harnath, 21 Bom. 69 1055
Golap Chand Nowlakha *v.* Ashutosh Chatterjee, 21 Calc. 602 103
Goma *v.* Narsingrao, 20 Bom. 260 ... 817
Gonesh Chunder Sikdar *v.* Queen-Empress, 24 Calc. 157 91
Gonesh Pershad *v.* Fazul Emam Khan, 23 Calc. 857 1167
Gopal Chunder Mitra *v.* Ram Lal Goshain, 21 Calc. 554 104
Gopal Das *v.* Bihari Lal, 17 All. 218 ... 565
Gopal Hari Joshi *v.* Ramakant Rangnath Joshi, 21 Bom. 458 926
Gopal Krishna Parachure *v.* Sakhojirav, 18 Bom. 133 ... ... 630, 1231
Gopal Lall Seal *v.* Manick Lall Seal, 24 Calc. 288 1336
Gopal Nana Shet *v.* Joharmal, 19 Bom. 578 421
Gopal Purshotam *v.* Bai Divali, 18 Bom. 241 205
Gopal Ramchandra *v.* Gangaram Anand Shet, 20 Bom. 721 523
Gopal Ramchandra Naik *v* Dashrathshet, 21 Bom. 244 631
Gopalrao Krishna Rajopadhe *v.* Mahadevrao Ballal Mule, 21 Bom. 394 739
Gopal Reddi *v.* Chenna Reddi, 18 Mad. 158... 1129
Gopal Sadashiv Palekar *v.* Nageshwar Sitaram Phansalkar, 21 Bom. 608 ... 632
Gopal Sah *v.* Janki Koer, 23 Calc. 217 ... 752
Gopaludu *v.* Venkataratnam, 18 Mad. 175 ... 584

Col.

Gopendro Chunder Mitter *v.* Mokaddam Hossain, 21 Calc. 702 1139
Gopi Koeri *v.* Gopi Lal, 21 Calc. 799 1206, 1245
Gopi Nath Bagdi *v.* Ishur Chundra Bagdi, 22 Calc. 800 263
Gopinath Chakravarti *v.* Umakanta Das Roy, 24 Calc. 169 97
Gopi Nath Masant *v.* Adoita Naik, 21 Calc. 776 1204
Gordhandas Jadowji *v.* Harivalubdas Bhaidas, 21 Bom. 281 815
Gossain Chutturbhooj Dut *v.* Ishrimul, 21 Calc. 844 1149
Goswami Shri 108 Shri Girdhariji *v.* Govardhanlalji Girdhariji, 18 Bom. 290 ... 602
Goswami Shri 108 Shri Girdhariji *v.* Govardhanlalji Girdhariji, 18 Bom. 294 ; L. R. 21 I. A. 13 602
Goundan *v.* Goundan, 17 Mad. 134 394, 779
Goundan *v.* Rangayya Goundan, 20 Mad. 449 778
Gourhari Kaiburto *v.* Bhola Kaiburto, 21 Calc. 233 648
Gous Mahomed *v.* Khawas Ali Khan, 23 Calc. 450 1043
Govind *v.* Vithal, 20 Bom. 753 ... 588, 594, 1211
Govinda Pillai *v.* Ramanuja Pillai, 18 Mad. 171 734
Govind Balvant Shivnekar *v.* Lakshman bin Nana Teli, 18 Bom. 522 ... 1077
Govindram *v.* Tatia, 20 Bom. 383 ... 679
Govind Sitaram *v.* Bapuji Mohadeo, 18 Bom. 516 ... ... 615, 952
Great Indian Peninsular Railway Co. *v.* Raisett Chandmull, 19 Bom. 165 ...700, 1028
Grenon *v.* Lachmi Narain Augurwala, 24 Calc. 8 ; L. R. 23 I. A. 119 244
Griffiths *v.* Tezia Dosadh, 21 Calc. 262 ... 13
Grija Nath Roy *v.* Mia Ulla Nasoya, 22 Calc. 744 note 647
Grish Chunder Roy *v.* Dwarkadass Agarwallah, 24 Calc. 528 226
Grish Chunder Sasmal *v.* Dwarka Nath Dinda, 24 Calc. 640 919
Gudar Singh. In the Matter of the Petition of, 19 All. 291 1183
Gulabdas Bhaidas, In re, 20 Bom. 83 ... 113
Gulabsingji *v.* Lakshmansingji, 18 Bom. 100 1299
Gunga Kumar Mitter *v.* Asutosh Gossami, 23 Calc. 863 ... ... 741, 899
Gunga Narain Gope *v.* Kali Churn Goala, 22 Calc. 179 1306
Gunjra Kuar *v.* Ablakh Pande. 18 All. 478... 396
Gurdyal Singh *v.* Raja of Faridkhot, 22 Calc. 222 ; L. R. 21 I. A. 171 435
Gurlingapa Satwirapa Gidwir *v.* Nandapa Chanbasapa Solapuri, 21 Bom. 797 503, 517
Gurubasaya *v.* Chanmalappa, 19 Bom. 286 351, 1243
Gurulingaswami *v.* Ramalakshmamma. 18 Mad 53 ... 378, 465, 467, 519
Gurunath Shrinivas Desai *v.* Chenbasappa, 18 Bom. 745 ... 1049, 1245
Gurusami Pillai *v.* Sivakami Ammal, 18 Mad 347 ; L. R. 22 I. A. 119 537
Guruvayya *v.* Vudayappa, 18 Mad. 26 35, 162
Gyanund Asram *v.* Bepin Mohun Sen, 22 Calc. 734 43

Hafizabai *v.* Abdul Karim, 19 Bom. 83
Hafiz Suleman *v.* Abdullah, 16 All. 133
Haidar Shah *v.* Jamna Das, 17 All. 156
Haidri Begam *v.* Nathu, 17 All. 45
Hajrat Akramnissa Begam *v.* Valiulnissa Begam, 18 Bom. 429 ... 400, 408.
Haliburton *v.* Administrator-General of Bengal, 21 Calc 488 ... ... 1.
Hamida Bibi *v.* Ali Husen Khan, 17 All. 172 35, 4
Hamidunnissa Bibi *v.* Gopal Chandra Malakar, 24 Calc. 661 1297
Hanmanta Kolaji *v.* Mahadev Kondaji, 18 Bom. 513 899
Hanuman Prasad Singh *v.* Bhaganti Prasad, 19 All. 357 731
Hanumayya *v* Venkatasubbayya, 18 Mad. 23 1031
Hara Coomar Sircar *v.* Doorgamoni Dasi, 21 Calc. 195 1011
Haradhone Dass *v.* Ramdoyal Rai, 21 Calc. 181 note 916
Haramoni Dassee *v.* Hari Churn Chowdhry, 22 Calc. 833 839
Harchandar Singh *v.* Lal Bahadur Singh, 16 All. 359 607
Har Charan Singh *v.* Har Shankar Singh, 16 All. 464 1098
Har Charan Singh *v.* Har Shankar Singh, 18 All. 59 1098
Harendra Lall Roy *v.* Sarvamangala Dabee, 24 Calc. 183 1261
Hargu Lal Singh *v.* Gobind Rai, 19 All. 541 368
Hari Balkrishna *v.* Naro Moreshvar, 18 Bom. 342 ... ... 249, 1220
Haribhai Gandabhai *v.* Secretary of State for India. 20 Bom. 764 619
Hari Kishore Mitra *v.* Abdul Baki Miah. 21 Calc. 920 ... ... 762, 1263
Hari Krishna Joshi *v* Shankar Vithal, 19 Bom. 420 1000
Harilal Girdharlal *v* Nagar Jeyram, 21 Bom. 38 525
Harilal Pranlal *v.* Bai Rewa, 21 Bom. 376 534, 728
Hari Mandle *v.* Jafar, 22 Calc. 457 .. 949
Hari Mohan Shaha *v.* Baburali, 24 Calc. 715 739
Hari Nath Chatterjee *v.* Mothurmohun Goswami, 21 Calc. 8 ; L. R. 20 I. A. 183. 727
Hari Raghunath Joshi *v.* Krishnaji Anant Joshi, 19 Bom. 546 ... 168, 1126
Hari Raj Singh *v.* Ahmaduddin Khan, 19 All. 545 1273
Haris Chandra Chowdhry *v.* Raikishori Barmani, 22 Calc. 347 495
Harishankar Jebhai *v.* Naran Karsan, 18 Bom. 260 ... ... 205, 695
Harising Devisingrao *v.* Bhausing, 20 Bom. 548 133
Hari Vasudev Kamat *v.* Mahadu Dad Gavda, 20 Bom. 435 912
Harjivan *v.* Shivram, 19 Bom. 620 ... 735
Harkant Sen *v.* Biraj Mohan Roy, 23 Calc. 876 ... ... 412, 751
Har Nandan Sahai *v.* Behari Singh, 22 Calc. 3 42
Har Sarup *v.* Balgobind, 18 All. 9 ... 750
Hasan Ali *v.* Siraj Husain, 16 All. 252 ... 1067
Hassu *v.* Ram Kumar Singh, 16 All. 183 ... 1096

	Col.
...i Abdulabhai, In re, 20 Bom. 283	1196, 1198
...aziuddin, 19 All. 202	863, 1085
...i Nath Khan *v.* Ramani Kanta Roy, Calc. 575	926
...nta Kumari Debi *v.* Jagadindra Nath ...oy, 22 Calc. 214; L. R. 21 I. A. 131 ...	373
...i Chunder Sanyal *v.* Sarnamoyi Debi, 22 Calc. 354	521
...em Coomaree Dassee *v.* Queen-Empress, 24 Calc. 551	210
Hemming, In the Goods of, 23 Calc. 579 ...	662
Henderson, In the Goods of, 22 Calc. 491 ...	987
Hewetson *v.* Deas, 21 Calc. 526	1182
Hildreth *v.* Sayaji Piraji, 20 Bom. 380 ...	154
Hill *v.* Administrator-General of Bengal, 23 Calc. 506	1235
Himalaya Bank *v.* Quarry, 17 All. 252	211, 353
Himatram *v.* Khushal Jethiram Gujar, 18 Bom. 98	204
Hingan Lal *v.* Mansa Ram, 18 All. 384 ...	689
Hirachand Harjivandas *v.* Kasturchand Kasidas, 18 Bom. 224 ...	422, 920
Hira Lal *v.* Ghasitu, 16 All. 318 ...	1270
Hira Lal *v.* Kishan Lal, 19 All. 543 ...	914
Hira Lal *v.* Saheb Jan, 18 All. 107 ...	1333
Hira Lal Sircar *v.* Queen-Empress, 22 Calc. 757	1221
Hormarji Ardeshir Hormarji, In the Matter of, 19 Bom. 778	571
Hormarji Ardesir Hormarji, In the Matter of, 19 Bom. 297	571
Hormasji Manekji Dadachanji *v.* Keshav Purshotam, 18 Bom. 13	1040, 1049
Hormasji Rustomji Dasar *v.* Pestonji Edalji Dharwar, 19 Bom. 88	219
Hormusji Nowroji Davur *v.* Dadabhai Nowroji Davur, 20 Bom. 310	344
Hossain Ali Mirza *v.* Abid Ali Mirza, 21 Calc. 177	1181
Hurbai *v.* Hiraji Byramji Shanja, 20 Bom. 116	801
Hurri Krishna Panda *v.* Balabhadra Panda, 23 Calc. 431	139
Hurri Bhusan Mukerji *v.* Upendra Lal Mukerji. 24 Calc. 1; L. R. 23 I. A. 97	709, 1009
Hurri Pershad Chowdhry *v.* Nasib Singh, 21 Calc. 542 ...	176, 758
Hurry Ram *v.* Nursingh Lal, 21 Calc. 129	95, 1115
Husain *v.* Govardhandas Parmanandas, 20 Bom. 1	398, 653
Husaini Begam *v.* Husaini Begam, 17 All. 573.	635
Husananna *v.* Linganna, 18 Mad. 423 ...	31
Hussain *v.* Madan Khan, 17 Mad. 265 ...	194
Husseinmian *v.* Collector of Kaira, 21 Bom. 48	1124
Hussein Miyan *v.* Collector of Kaira, 21 Bom. 257	1125
Ibrahim Ali *v.* Mohsin Ali, 18 All. 422 ...	32
Ibrahim Ali Khan *v.* Ummatul Zohra, 19 All. 267; L. R. 24 I. A. 1	798
Ibrahimbhai *v.* Fletcher, 21 Bom. 827 ...	1309
Ibrahimji Issaji *v.* Bejanji Jamsedji, 20 Bom. 265	1298
Illikka Pakramar *v.* Kutti Kunhamed, 17 Mad. 69	812, 1066
Imambandi Begum *v.* Kamleswari Pershad, 21 Calc. 1005; L. R. 21 I. A. 118	2
Imam Bux *v.* Mahomed Gope, 24 Calc. 319 note	1207
Imam Khan *v.* Ayub Khan, 19 All. 517 ...	1092
Imamuddin *v.* Surjaiti, 19 All. 329 note ...	994
Imbichi Kandan *v.* Imbichi Pennu, 19 Mad. 1	811
Imdad Ali *v.* Jagan Lal, 17 All. 478	169, 410
Imdad Husain *v.* Azizunnisa, 23 Calc. 483; L. R. 23 I. A. 8 ...	736
Imperial Bank of Persia *v.* Fattehchand Khubchand, 21 Bom. 294	547
Indarjit *v.* Lal Chand, 18 All. 168 ...	392
Indarman, In the Matter of the Petition of, 18 All. 45	138
Inderdawan Pershad *v.* Gobind Lall Chowdhry, 23 Calc. 790	858
Indo *v.* Indo, 16 All. 28	265
Indo Mati *v.* Gaya Prasad, 19 All. 142 ...	36
Indra Chandra Singh, In the Goods of, 23 Calc. 580	426, 664
Inventions and Designs Act, 1888, In the Matter of, 23 Calc. 702	586
Irshad Ali Chowdhry *v.* Kanta Pershad Hazaree, 21 Calc. 935 ...	1204, 1243
Ishan Chandra Chandra *v.* Queen-Empress, 21 Calc. 328	5, 1232
Ishan Chunder Das Sarkar *v.* Bishu Sirdar, 24 Calc. 825	1212, 1267
Ishan Chunder Hazra *v.* Rameswar Mondol, 24 Calc. 831	870
Ishan Chunder Sirkar *v.* Beni Madhub Sirkar, 24 Calc. 62	172
Ishvar Lakhmidat *v.* Harjivan Ravji, 21 Bom. 681	565
Ishwardas Tribhovandas *v.* Kalidas Bhaidas, 20 Bom. 779	1202
Ismail Ariff *v.* Leslie, 24 Calc. 399 ...	272
Isri Pershad *v.* Queen-Empress, 23 Calc. 621	388
Jadub Lall Shaw Chowdhry *v.* Madhub Lall Shaw Chowdhry, 21 Calc. 34 ...	1277
Jafar Husain *v.* Ranjit Singh, 17 All. 518 ...	46
Jagannath *v.* Ganesh, 18 All. 413	206, 1094
Jagan Nath *v.* Makund Prasad, 18 All. 37 ...	1171
Jagan Nath *v.* Mannu Lal, 16 All. 231	68, 500
Jagannath Brakhbhau *v.* Sassoon, 18 Bom. 606	1240, 1245
Jagannath Churn *v.* Akali Dassia, 21 Calc. 468	611, 615
Jagannath Ramji, In re, 19 Bom. 96	455, 456
Jagarnath Mandhata *v.* Queen-Empress, 24 Calc. 324	90
Jagarnath Singh *v.* Budhan, 23 Calc. 115 ...	35
Jaga Singh *v.* Chooa Singh, 22 Calc. 480 ...	99
Jagdesh Chaudhri *v.* Tulshi Chaudhri, 16 All. 19	35
Jagernath Sahai *v.* Dip Rani Koer, 22 Calc. 871	414, 1165
Jaggar Nath Pande *v.* Jokhu Tewari, 18 All. 223	997
Jagmohandas Kilabhai *v.* Allu Maria Duskal, 19 Bom. 338	136, 498
Jagobandhu Dey Poddar *v.* Dwarika Nath Addya. 23 Calc. 446 ...	531, 1122
Jahiruddin *v.* Queen-Empress, 22 Calc. 306	1292
Jaipal Gir *v.* Dharmapala 23 Calc. 60 ...	1058

Col.

Jalbhai ArdeshirShet *v.* Manoel, 19 Bom.680 1175
Jambuvayyan *v.* Venkatarayar, 19 Mad. 65 563
Jamnadas Bhukandas, In re, 19 Bom. 737 ... 115
Jamna Prasad *v.* Mathura Prasad, 16 All. 129 35
Janardhan Ganguli *v.* Kali Kristo Thakur, 23 Calc. 393 1143
Janbai *v.* Sale Mahomed Jafferbhoy, 19 Bom. 10 54
Janki *v.* Bhairon, 19 All. 133 534
Jankibai *v.* Mahadev, 18 Bom. 147 ... 504
Janki Das *v.* Ram Partab, 16 All. 37 ... 1250
Janki Kuar *v.* Sarup Rani, 17 All. 99 ... 1251
Janki Prasad *v.* Kishen Dat, 16 All. 478 ... 1051
Janki Prasad *v.* Ulfat Ali, 16 All. 284 ... 169
Jasoda Bibi *v.* Parmanand, 16 All. 256 ... 680
Jaswant Singh *v.* Sheo Narain Lal, 16 All. 157 ; L. R. 21 I. A. 6 383
Jatra Mohun Sen *v.* Aukhil Chandra Chowdhry, 24 Calc. 334 ... 916, 1144
Javermal *v.* Nazir of District Court of Poona, 18 Bom. 748 33
Jawadul Huq *v.* Ramdas Saha, 24 Calc. 143. 1117
Jawahir Singh *v.* Debi Singh. 18 All. 119 ... 1246
Jayinilabdin Ravuttan *v.* Vijia Ragunadha Ayyarappa Maikan Gopalar, 19 Mad. 315. 1170
Jaynarayan Meghraj *v.* Ismail Kuramali, 20 Bom. 377 1158
Jehangir B. Karani & Co., In re, 19 Bom 88 219
Jethabhai Dayalji *v.* Girdhar, 20 Bom. 158... 1052
Jeynarayan Meghraj *v.* Ismail Kurimali, 19 Bom. 710 77
Jhabbu Singh *v.* Ganga Bishan, 17 All. 529 455
Jhoja Singh *v.* Queen-Empress, 23 Calc. 493 964
Jhojha Singh *v.* Queen-Empress, In the Matter of, 24 Calc. 155 1183
Jiaullah Sheikh *v.* Inu Khan, 23 Calc. 693... 383
Jiban Das Oswal *v.* Durga Pershad Adhikari, 21 Calc. 252 1100
Jijibhoy Muncherji Jijibhoy *v.* Byramji Jijibhoy, 18 Bom. 189 273
Jino *v.* Manon, 18 All. 125 955
Jivan Ambaidas, In re, 19 Bom. 362 ... 1176
Jiwan Singh *v.* Misri Lal, 18 All. 146 ; L. R. 23 I. A. 1 521
Jogemaya Dassi *v.* Thackomoni Dassi, 24 Calc. 473 ... ... 163, 719
Jogendra Chandra Ghose *v.* Mahesh Chandra Dutta, 23 Calc. 480 414
Jogendra Kishore Roy Chowdhry *v.* Brojendra Kishore Roy Chowdhry, 23 Calc. 731 701
Jogendra Nath Roy *v.* Price, 24 Calc. 584 ... 190
Jogeswar Narain Deo *v.* Ram Chandra Dutt, 23 Calc. 670 ; L. R. 23 I. A. 37 ... 536
Jogodanund Singh *v.* Amrita Lal Sircar, 22 Calc. 767 406
Jogodishury Debea *v.* Kailash Chundra Lahiry, 24 Calc. 725 ... 37, 927
Jonardan Dobey *v.* Ramdhone Singh, 23 Calc. 738 154
Joseph *v.* Salt Co., 17 Mad. 371 ... 634, 1246
Joshua *v.* Alliance Bank of Simla, 22 Calc. 185 1267
Joshy Assam, In the Matter of, 23 Calc. 290 307
Jugdown Sinha *v.* Queen-Empress, 23 Calc. 372 280
Juggut Chunder Chowdhry *v.* Golack Chunder Ghose, 23 Calc. 522 100
Jugul Kishori Chowdhurani *v.* Anund Chowdhuri, 22 Calc. 545 ...
Jugul Kissore Lal Sing Deo *v.* Kartic Chunder Chattopadhya, 21 Calc. 116
Juji Kamti *v.* Annai Bhatta, 17 Mad. 382
Jumnabai *v.* Vissondas Ruttonchand, 21 Bom. 576 674,

Kadar Hussain *v.* Hussain Saheb, 20 Mad. 118 61
Kader Moideen *v.* Nepean, 21 Calc. 882; L. R. 21 I. A. 96 847
Kailasa Padiachi *v.* Ponnukannu Achi, 18 Mad. 456 ... ... 456, 689, 692
Kailash Chandra Chuckerbutty *v.* Kashi Chandra Chuckerbutty, 24 Calc. 339 ... 489
Kailash Chandra Pal *v.* Kunja Behari Poddar, 24 Calc. 391 977
Kailash Mondal *v.* Baroda Sundari Dasi, 24 Calc. 711 1091
Kakaji Shet Shimpi *v.* Nassaruddin, 18 Bom. 103 ... ... 209, 461, 800
Kalappa *v.* Shivaya, 20 Bom. 492 ... 860
Kalavati *v.* Chedi Lal, 17 All. 531 ... 230
Kaleloola Sahib *v.* Nuseerudeen Sahib, 18 Mad. 201 793
Kaliana Sundaram Ayyar *v.* Umamba Bayi Saheb. 20 Mad. 421 480
Kalian Rai *v.* Ram Ratan, 18 All. 306 ... 919
Kalian Singh *v.* Ram Charan, 18 All. 34 .. 134
Kaliappa Gounden *v.* Venkatachalla Thevan, 20 Mad. 253 778
Kali Charan *v.* Ahmad Shah Khan, 17 All. 48 333
Kali Charan Pal *v.* Rasik Lal Pal, 23 Calc. 962 note ... ...
Kalihur Ghose *v.* Umae Patwari, 24 Calc. 241 ... ...
Kali Kissen Tagore *v.* Anund Chunder Roy, 23 Calc. 557 ... ...
Kali Krishna Tagore *v.* Izzatannissa Khatun, 24 Calc. 557 ... ... 1196, 1208
Kalka Singh *v.* Paras Ram, 22 Calc. 434 ; L. R. 22 I. A. 68... ... 320, 828, 1007
Kallian Mal *v.* Madan Mohan, 17 All. 447 ... 995
Kallinath Chakravarti *v.* Upendra Chunder Chowdhry, 24 Calc. 212 647
Kallu *v.* Halki, 18 All. 295 ... 693, 1223
Kally Churn Bhuttacharjee *v.* Durga Churn Bhuttacharjee, 21 Calc. 904 ... 269
Kally Dass Ahiri *v.* Monmohini Dassee, 24 Calc. 440 650
Kalu *v.* Barsu, 19 Bom. 803 ... 502, 896
Kalu *v.* Latu, 21 Calc. 259 ... 340, 745
Kalyanaramayyar *v.* Mustak Shah Saheb, 19 Mad. 396 14
Kamalakshi *v.* Ramasami Chetti, 19 Mad. 127 ... ... 476, 1067, 1316
Kamalammal *v.* Peeru Meera Levvai Rowthen, 20 Mad. 481 580
Kamalammal *v.* Raju Naicker, 19 Mad. 308. 771
Kamarazu *v.* Venkataratnam, 20 Mad. 293... 537
Kamineymoney Bewah, In the Goods of, 21 Calc. 697 1012
Kamini Kant Roy *v.* Ram Nath Chuckerbutty, 21 Calc. 265 ... 1100, 1330
Kammaran Nambiar *v.* Chindan Nambiar, 18 Mad. 32 648

	Col.
Gowala *v.* Queen-Empress, 24 585	1338
.mal *v.* Rangachariar, 20 Mad. 25	1064
;ya *v.* Narasimhulu, 19 Mad. 38 ...	264
Lall Khan *v.* Anund Lall Dass, 23 Alc. 903 note	524
asami Pillai *v.* Murugammal, 19 Mad. 6	510
naiya Lal *v.* Munni, 18 All. 260 ...	1013
ɔji Bavla *v.* Arjun Shamji. 18 Bom. 115	1123
ankuchand Shivchand *v.* Rustomji Hormusji, 20 Bom. 109	707
Kanno Dai *v.* Lacy, 19 All. 235	526
Kanti Chunder Mookerjee *v.* Saligram, 24 Calc. 319	1207
Kanti Ram *v.* Kutubuddin Mahomed, 22 Calc. 33	851
Kanto Prasbad Hazari *v.* Jagat Chandra Dutta, 23 Calc. 335 ... 384 1068,	1216
Kanye Lall Dass *v.* Shama Churn Dawn, 21 Calc. 566	989
Karamalli Joosub, Ex-parte, 21 Bom. 297 ...	569
Karamchand Gokaldas *v.* Ghelabhai Chakaldas, 19 Bom. 34	411
Karamsi Madhowji *v.* Karsandas Natha, 20 Bom. 718	530
Karim Bakhsh *v.* Khuda Baksh, 16 All. 247	803
Karim Chowkidar *v.* Sundar Bewa, 24 Calc. 207	96
Kariyadan Pokkar *v.* Kayat Beerau Kutti, 19 Mad. 461	807
Karmi Khan *v.* Brojo Nath Das, 22 Calc. 244 101,	1144
Kashi *v.* Sadashiv Sakharam Shet, 21 Bom. 229	911
Kashiba *v.* Shripat Narshiv, 19 Bom. 697 363, 833,	1250
Kashinath Ballal *v.* Ganpatro Amriteshvar Joshi, 18 Bom. 696	1295
Kashinath Sakharam Kulkarni *v.* Nana, 21 Bom. 731	1249
Kashi Prasad *v.* Sheo Sahai, 19 All. 186 ...	175
Kasim Saiba *v.* Sudhindra Thirtha Swami, 18 Mad. 359	482
Kassim Saib *v.* Luis, 17 Mad. 82... ...	842
Kastur Chand *v.* Dhanpat Singh, 23 Calc. 26; L. R. 22 I. A. 162	570
Katras Jherria Coal Co. *v.* Sibkrishta Daw & Co., 22 Calc. 297	980
Kathiawar Trading Co. *v.* Virchand Dipchand, 18 Bom. 119 ... 217,	680
Kedari *v.* Gajai, 18 Bom. 690	177
Kefait Hossein *v.* Sheo Pershad Singh, 23 Calc. 821	685
Kelu Mulacheri Nayar *v.* Chendu, 19 Mad. 157	1066
Ker *v.* Meakin, 20 Bom. 370	1325
Keshab Chunder Roy *v.* Akhil Metey, 22 Calc. 998	1113
Keshavlal Bechar *v.* Pitamberdas Tribhuvandas, 19 Bom. 261	755
Keshavlal Girdharlal *v.* Bai Parvati, 18 Bom. 327 164,	1086
Keshav Pandurang *v.* Vinayak Hari, 18 Bom. 355	1050
Keshav Ramchandra *v.* Krishnarao Venkatesh, 20 Bom. 508 ... 673,	933
Kesri *v.* Muhammad Baksh, 18 All. 221 ...	225
Kewal Kishan Singh *v.* Sookhari, 24 Calc. 173	276

	Col.
Khadir Moideen *v.* Rama Naik, 17 Mad. 12	693
Khanderao *v.* Narsingrao, 19 Bom. 289 ...	817
Khettar Nath Biswas *v.* Faizuddin Ali, 24 Calc. 682	1168
Khetterpal Sritirutno *v.* Khelal Kristo Bhuttacharjee, 21 Calc. 90	269
Khettramoni Dasi *v.* Shyama Churn Kundu, 21 Calc. 539 46,	1244
Khoja Sivji *v.* Hasham Gulam, 20 Bom. 480	463
Khwaja Muhammad Yusuf, In the Matter of the Petition of, 18 All. 196 ...	53
Kilabhai Lallubhai *v.* Hargovan Mansukh, 19 Bom 133	377
Kirparam Jhumekram Modia *v.* Modia Dayalji Jhumekram, 19 Bom. 135 ...	764
Kishan Singh *v.* Aman Singh, 17 All. 42 ...	178
Kishore Bun Mohunt *v.* Dwarkanath Adhikari, 21 Calc. 784; L. R. 21 I. A. 89 416,	1083
Kishore Bun Mohunt *v.* Prosonno Coomar Adhikari, 21 Calc. 784; L. R. 21 I. A. 89 416,	1083
Kishori Mohun Roy *v.* Ganga Bahu Debi, 23 Calc. 228; L. R. 22 I. A. 183 865,	866
Kishori Mohun Roy Chowdhry *v.* Nund Kumar Ghosal, 24 Calc. 720 ...	653
Kissory Mohun Roy *v.* Kali Churn Ghose, 24 Calc. 190 420,	663
Kissory Mohun Roy *v.* Kally Churn Ghose, 22 Calc. 100	333
Kolandaya Sholagan *v.* Vedamuthu Sholagan, 19 Mad. 337	521
Kollantavida Manikoth Onakkan *v.* Tiruvalil Kalandan Aliyamma, 20 Mad. 362	1345
Kollipara Pullamma *v.* Maddula Tatayya, 19 Mad. 340	692
Komal Chandra Pal *v.* Gour Chand Audhikari, 24 Calc. 286	226
Komappan Nambiar *v.* Ukkaran Nambiar, 17 Mad. 214 378,	813
Kommachi Kather *v.* Pakker, 20 Mad. 107	1159
Kondayya Chetti *v.* Narasimhulu Chetti, 20 Mad. 97	1003
Koolappa Naik *v.* Koolappa Naik, 17 Mad. 34	732
Koolsom Bibee *v.* Aga Mahomed Jaffer Bindanim, 25 Calc. 9; L. R. 24 I. A. 196 799,	805
Koopmia Sahib *v* Chidambaram Chetti, 19 Mad. 105	1271
Koormayya *v.* Krishnamma Naidu, 17 Mad. 165	753
Koowar Singh *v.* Gour Sunder Pershad Singh, 24 Calc. 887	1145
Kora Nayar *v.* Ramappa, 17 Mad. 267	1273
Ko Shway Aung *v.* Strang Steel & Co., 21 Calc. 241	1226
Krishna Ayyan *v.* Vythianatha Ayyan, 18 Mad. 252 484,	1198
Krishnabai *v.* Khangowda, 18 Bom. 197 513,	721
Krishnabhupati Devu *v.* Ramamurti Pantulu, 18 Mad. 405	323
Krishnabhupati Devu *v.* Vikrama Devu, 18 Mad. 13	1094
Krishnacharya *v.* Lingawa, 20 Bom. 270 703,	974
Krishna Dhan Mandal *v.* Queen-Empress, 22 Calc. 377	11
Krishnadhan Nath *v.* Damayanti Devi, 23 Calc. 396 note	1143

Col.

Krishnaji *v.* Maheshvar Lakshman Gondhalekar, 20 Bom. 346 864
Krishnaji *v.* Wamnaji, 18 Bom. 144 444, 958
Krishnaji bin Malji *v.* Vithu, 18 Bom. 505 337
Krishnaji Narasinva *v.* Krishnaji Narayan Joshi, 21 Bom. 467 631
Krishnaji Narayan Pokshe *v.* Municipality of Tasgaon, 18 Bom. 547 112
Krishnaji Ramchandra *v.* Antaji Pandurang, 18 Bom. 256 974
Krishna Menon *v.* Kesavan, 20 Mad. 305 ... 695
Krishnan *v.* Chadayan Kutti Haji, 17 Mad. 17 378
Krishnan Nambiar *v.* Krishnan Nair, 18 Mad. 452 note 812, 1163
Krishnan Nambudri *v.* Raman Menon, 20 Mad. 484 1044
Krishna Panda *v.* Balaram Panda, 19 Mad. 290 1082
Krishna Patter *v.* Srinivasa Patter, 20 Mad. 124 ... ... 813, 867
Krishna Pillai *v.* Rangasami Pillai, 18 Mad. 462 ... ... 334, 1302
Krishnappa Chetti *v.* Adimula Mudali, 20 Mad. 84 250
Krishna Ramaya Naik *v.* Vasudev Venkatesh Pai, 21 Bom. 808... ... 175, 502
Krishnarao Ramchandra *v.* Benabai, 20 Bom. 571 ... ... 428, 512
Krishnasami *v.* Sundarappayar, 18 Mad. 415 ... ... 331, 916, 1219
Krishnasami Ayyangar *v.* Rajagopala Ayyangar, 18 Mad. 73 ... 34, 336, 384, 501, 514, 964
Krishnasami Ayyangar *v.* Ranga Ayyangar, 20 Mad. 369 1346
Krishnasami Ayyar *v.* Janakiammal, 18 Mad. 153 ... ... 856, 1153
Krishnasami Chetti *v.* Natal Emigration Board, 17 Mad. 216 1199
Krishnashet *v.* Hari Valji Bhatye, 20 Bom. 488 546
Krishna Velji Marwadi *v.* Bhau Mansaram, 18 Bom. 61 ... ... 415, 1242
Krishnaya Navada *v.* Panchu, 17 Mad. 187 1064
Krishnayya *v.* Secretary of State for India, 19 Mad. 24 769
Kristamma Naidu *v.* Chapa Naidu, 17 Mad. 410 1247
Kristna Reddi *v.* Varadarajulu Reddi, 18 Mad. 338 note 579
Kristodhone Ghose *v.* Brojo Gobindo Roy, 24 Calc. 895 97
Kuar Sen *v.* Mamman, 17 All. 87 309, 998
Kubra Bibi *v.* Wajid Khan, 16 All. 59 865, 866
Kulsum Bibi *v.* Faqir Mahammad Khan, 18 All. 298 803
Kumara Akkappa Nayammi *v.* Sithala Naidu, 20 Mad. 476 683
Kumarasami Pillai *v.* Orr, 20 Mad. 145 ... 628
Kumbalinga Pillai *v.* Ariaputra Padiachi, 18 Mad. 436 87
Kunhan Mayan *v.* Bank of Madras, 19 Mad. 234 82
Kunhappa Nambiar *v.* Shridevi Kettilamma, 18 Mad. 451 ... ... 811, 1163
Kunhayen Haji *v.* Mayan, 17 Mad. 98 644, 658
Kunhi Chandu Nambiar *v.* Kunkan Nambiar, 19 Mad. 384 655
Kunhi Mamod *v.* Kunhi Moidin, 19 Mad. 176 800

Col.

Kunhi Marakkar Haji *v.* Kutti Umma, 20 Mad. 496 594
Kunhi Pennu *v.* Chiruda, 19 Mad. 440 ... 811
Kunjo Behary Singh *v.* Madhub Chundra Ghose, 23 Calc. 884 1209
Kuppu Ammal *v.* Saminatha Ayyar, 18 Mad. 482 ... ... 758, 1085
Kuppu Nayudu *v.* Venkatakrishna Reddi, 20 Mad. 82 1062
Kuppusami Naidu *v.* Smith & Co., 19 Mad. 178 246
Kuverji *v.* Babai, 19 Bom. 374 380
Kyte *v.* Kyte and Cooke, 20 Bom. 362 360, 362

Lachhan Kunwar *v.* Anant Singh, 22 Calc. 445; L. R. 22 I. A. 25 738
Lachhan Kunwar *v.* Manorath Ram, 22 Calc. 445; L. R. 22 I. A. 25 738
Lachman Das *v.* Khunnu Lal, 19 All. 26 ... 478
Lachman Lal Chowdhri *v.* Kanhaya Lal Mowar, 22 Calc. 609; L. R. 22 I. A. 51 ... ... 470, 715, 1008
Lachmi Narain *v.* Chote Lal, 16 All. 449 ... 417
Lachmi Narain *v.* Jethu Mal, 16 All. 386 ... 1128
Lachmi Narain *v.* Jwala Nath, 18 All. 344 ... 338
Lachmi Narain *v.* Kunji Lal, 16 All. 449 .. 417
Lachmi Narain *v.* Muhammad Yusuf, 17 All. 63 863
Lakhmi Chand *v.* Ballam Das, 17 All. 425... 749
Lakmia, In re, 18 Bom. 400 ... 114, 1184
Lakshmakka *v.* Boggaramanna, 19 Mad. 501 487
Lakshman *v.* Vithu, 18 Bom. 221 ... 642
Lakshmana *v.* Appa Rau, 17 Mad. 73 ... 776*
Lakshmana Ayyan *v.* Rangasami Ayyan, 17 Mad. 78 258
Lakshmandas Raghunath Das *v.* Rambhau Mansaram, 20 Bom. 791 ... 124, 1215
Lakshmi Ammah *v.* Ponnassa Menon, 17 Mad. 394 38
Lakshminarayanappa *v.* Venkataratnam, 17 Mad. 395 719
Lala *v.* Narayan, 21 Bom. 382 45
Lala Pryag Lal *v.* Jai Narayan Singh, 22 Calc. 419 ... ... 43, 1068, 1106
Lala Ramjewan Lal *v.* Dal Koer, 24 Calc. 406 533
Lalitagar *v.* Bai Suraj, 18 Bom. 316 ... 603
Lalit Mohun Singh Roy *v.* Chukkun Lal Roy, 24 Calc 834; L. R. 24 I. A. 76 ... 537
Lalji, In the Matter of the Petition of, 19 All. 302 ... ... 785, 1263
Lalji Mal *v.* Nand Kishore, 19 All. 332 ... 172
Lalji Shamji *v.* Walji Wardhman, 19 Bom. 507 612
Lalla Sheo Churn Lal *v.* Ramnandan Dobey, 22 Calc. 8 152
Lalla Tirhini Sahai *v.* Lalla Hurruk Narain, 21 Calc. 26 418
Lall Behary Dutt *v.* Thacomoney Dassee, 23 Calc. 899 524
Lallubhai Jethabhai *v.* Mundas Kuberdas, 20 Bom. 390 ... ... 857, 1049
Lallubhai Vajeram *v.* Bai Magangavri, 18 Bom. 59 151
Lalman *v.* Gopi Nath, 16 All. 144 ... 187
Laloo Singh *v.* Purna Chander Banerjee, 24 Calc. 149 699
Lalta Prasad *v.* Azizuddin, 19 All. 209; L. R. 24 I. A. 49 1009

	Col.
Laluchand *v.* Girjappa, 20 Bom. 469 ...	349
Latafut Hossein *v.* Anunt Chowdhry, 23 Calc. 517	1031
Latchanna *v.* Saravayya, 18 Mad. 164 ...	1094
Latifunnessa *v.* Dhan Kunwar, 24 Calc. 382	722
Ledlie *v.* Ledlie, 22 Calc. 544	360
Legal Remembrancer *v.* Shama Charan Ghose, 23 Calc. 52 ...	93
Lekha *v.* Bhauna, 18 All. 101 ...	36, 1182
Lep Singh Khasia *v.* Nimar Khasia, 21 Calc. 244	973
Lilla Singh *v.* Queen-Empress, 22 Calc. 286	939
Linga Reddi *v.* Sama Rau, 17 Mad. 469	1270
Lingum Krishna Bhupati Devu *v.* Kandala Sivaramayya, 20 Mad. 366	1343
Lloyd *v.* Webb, 24 Calc. 44	1326
Lolit Mohan Sarkar *v.* Queen-Empress, 22 Calc. 313	281, 441
Lomba Gomaji *v.* Vishvanath Amrit Tilvankar, 18 Bom. 86	855
Luchmeshar Sing *v.* Dookh Mochan Jha, 24 Calc. 677	1270
Luchmi Narain *v.* Martindell, 19 All. 253 ...	881
Lukhi Narain Jagadeb *v.* Jodu Nath Deo, 21 Calc. 504; L. R. 21 I. A. 39	124, 1213
Lutchmee Narain *v.* Byjanath Lahia, 24 Calc. 437	989
Luxumon Nana Patil *v.* Moroba Ramcrishna, 21 Bom. 502	270
MacMillan *v.* Shamsul Ullama M. Zaka, 19 Bom. 557	261
Madan Mohan Lal *v.* Kankai Lal, 17 All. 284	704
Madar Saheb *v.* Sannabawa Gujranshah, 21 Bom. 195	646
Madhava Rau *v.* Fernandes, 17 Mad. 368 ...	369
Madhavram Mugatram *v.* Dave Trambaklal Bhawanishankar, 21 Bom. 739 ...	491
Madhavrao Appaji Sathe *v.* Deonak, 21 Bom. 695	396, 632
Madho Bharthi *v.* Barti Singh, 16 All. 337 ..	879
Madho Das *v.* Ramji Patak, 16 All. 286	72, 170, 1297
Madho Prasad *v.* Kesho Prasad, 19 All. 337...	752
Madho Singh *v.* Kashi Singh, 16 All. 342	762, 1213
Madhub Lall Durgur *v.* Woopendranarain Sen, 23 Calc. 573	743
Madhub Mohapatra *v.* Sourendra Mohun Tagore, 23 Calc. 795	334
Madras Deposit and Benefit Society *v.* Oonnamalai Ammal, 18 Mad. 29 ...	397
Madras Doveton Trust Fund, In re, 18 Mad. 443	1290
Madras Hindu Mutual Benefit Permanent Fund *v.* Ragava Chetti, 19 Mad. 200 ...	214
Maduray Pillai *v.* Elderton, 22 Calc. 487 ..	1178
Mafatlal Narandas *v.* Bai Parson, 19 Bom. 320	133, 672
Mahabir Kandu *v.* Sheo Prasad Rai, 16 All. 325	620
Mahabir Pershad *v.* Adhikari Koer, 23 Calc. 942	938
Mahabir Prasad *v.* Sital Singh, 19 All. 520	751
Mahabir Singh *v.* Saira Bibi, 17 All. 520 ...	1278
Mahadev Balvant *v.* Lakshman Balvant, 19 Bom. 48	744
Mahadev Balvant *v.* Lakshman Balvant, 19 Bom. 99	517
Mahadevi *v.* Neelamani, 20 Mad. 269	528, 1079
Mahadu Ganu *v.* Bayaji Sidu, 19 Bom. 239 ...	1041
Mahalavu *v.* Kusaji, 18 Bom. 739 ...	350
Mahamaya Dasya *v.* Nitya Hari Das Bairagi, 23 Calc. 425	872
Mahanund Chuckerbutty *v.* Bani Madhub Chuckerbutty, 24 Calc. 27	90
Maharaja of Benares *v.* Daljit Singh, 19 All. 352	641
Maharaja of Bhartpur *v.* Kacheru, 19 All. 510	190
Maharajah of Vizianagram *v.* Sitaramarazu, 19 Mad. 100	722, 1188
Maheshar Baksh Singh *v.* Ratan Singh, 23 Calc. 766; L. R. 23 I. A. 57 ...	899
Mahmudi Sheikh *v.* Aji Sheikh, 21 Calc. 622	1034
Mahomdijan *v.* Administrator-General of Bengal, 23 Calc. 351	557
Mahomed Abdul Hafiz *v.* Latif Hosein, 24 Calc. 524	1130
Mahomed Akram Shaha *v.* Anarbi Chowdhrain, 32 Calc. 954	720
Mahomed Ali *v.* Wazid Ali, 23 Calc. 404 ...	987
Mahomed Azhar *v.* Raj Chunder Roy, 21 Calc. 354	1146
Mahomed Bhakku *v.* Queen-Empress, 23 Calc. 532 359,	1178
Mahomed Ershad Ali Khan Chowdhry *v.* Saroda Prosad Shaha, 23 Calc. 37 ..	983
Mahomed Golab *v.* Mahomed Sulliman, 21 Calc. 612 443,	1128
Mahomed Majid *v.* Mahomed Ashan, 23 Calc. 205	641
Mahomed Mozuffer Hossein *v.* Kishori Mohun Roy, 22 Calc. 909; L. R. 22 I. A. 129. 78, 381,	1153
Mahomed Riasat Ali *v.* Hasin Banu, 21 Calc. 157; L. R. 20 I. A. 155 ... 716,	1059
Mahommed Zohuruddeen *v.* Mahommed Noorooddeen, 21 Calc. 85 ... 76,	268
Mahudu Ganu *v.* Bayaji Sidu, 19 Bom. 239...	468
Makki, In re, 19 Mad. 350	1301
Makund Ram Sukal *v.* Saliq Ram Sukal, 21 Calc. 590; L. R. 21 I. A. 47... ...	66
Malapa Sidapu Desai *v.* Devi Naik, 21 Bom. 102 922,	1075
Malla Reddi *v.* Padmamma, 17 Mad. 48 ...	488
Mallikarjuna *v.* Patheneni, 19 Mad. 479 59,	1064
Mallikarjuna Prasada Naidu *v.* Durga Prasada Naidu, 17 Mad. 362 ... 508,	515
Mallikarjunna Prasada Nayudu *v.* Lakshminarayana, 17 Mad. 50	775
Mamman *v.* Kuar Sen, 16 All. 178 309,	998
Mammod *v.* Locke, 20 Mad. 487	1342
Manaji Bahirji *v.* Narayanrao Madhavrao, 19 Bom. 46	348
Manaku *v.* Sitaram Atmaram Vagh, 18 Bom. 142	153
Manasing *v.* Amad Kunhi, 17 Mad. 14 ...	134
Mana Vikrama *v.* Rama Patter, 20 Mad. 275...	309
Manavikraman *v.* Avisilan Koya, 19 Mad. 80	703
Mancharam Pranjivan *v.* Bai Mahali, 18 Bom. 315	137
Mancherji Bomanji *v.* Nusserwanji Mancherji, 20 Bom. 8	711
Manchharam *v.* Kalidas 19 Bom. 821 140,	1082

Col.

Manchubai Navalchand *v.* Tod, 20 Bom. 633 314
Maneklal Motilal *v.* Municipal Commissioner of Bombay, 19 Bom. 407 119
Mangal Khan *v.* Salim-ullah Khan, 16 All. 26 134
Mangar Ram *v.* Behari, 18 All. 358 ...1177, 1180
Mangli Prasad *v.* Debi Din, 19 All. 499 ... 740
Mangli Prasad *v.* Ishri Prasad, 18 All. 476... 925
Manick Lall Seal *v.* Surrut Coomaree Dassee, 22 Calc. 648 1033
Manika Gramani *v.* Ellappa Chetti, 19 Mad. 271 761
Manjhli *v.* Manik Chand, 19 All. 73 ... 224
Manjunath Mangeshaya Baindur *v.* Mangesh Sheshagiriapa Gokarnkar, 18 Bom. 546 1227
Manmatha Nath Mitter *v.* Secretary of State for India, L. R. 24 I. A. 177; 25 Calc. 194 635
Manohar Singh *v.* Sumirta Kuar, 17 All. 428 ... ... 384, 894
Mansingji *v.* Mehta Hariharram Narharram, 19 Bom. 307 35
Mantel, In re, 18 Mad. 19 825
Maqbul Ahmed Chowdhry *v.* Girish Chunder Kundu, 22 Calc. 634 99
Marian Pillai *v.* Bishop of Mylapore, 17 Mad. 447 146
Marimuthu Pillai *v.* Krishnasami Chetti, 17 Mad. 197 1017
Marine Insurance Certificate, In re, 19 Bom. 130 1222
Maruti *v.* Rama, 21 Bom. 333 516
Mary Tug Co. *v.* British India Steam Navigation Co., 24 Calc. 627; L. R. 24 I. A. 129 1194
Mushtaq Ahmad *v.* Amjad Ali, 19 All. 311 ... ... 994, 995
Mata Dayal *v.* Queen-Empress, 24 Calc. 755 1053
Matangini Dassee *v.* Chooneymoney Dassee, 22 Calc. 903 ... ... 1075, 1269
Mathura Das, In the Matter of the Petition of, 16 All. 80 ... ... 1113, 1177
Mathura Das *v.* Bhikhan Mal, 19 All. 16 ... 534
Mathura Das *v.* Narindar Bahadur, 19 All. 39; L. R. 23 I. A. 138 ... 581, 713
Mathura Das *v.* Panhalal, 19 Bom. 216 ... 1132
Mathura Nath Ghose *v.* Nobin Chandra Kundu Biswas, 24 Calc. 774 ... 1207
Mathusri Umamba Boyi Saiba *v.* Mathusri Dipamba Boyi Saiba, 19 Mad. 120; L. R. 23 I. A. 28 1032
Maula *v.* Bahala, 19 All. 34 620
Maula *v.* Gulzar Singh, 16 All. 130 ... 60, 1214
Mayhew *v.* Mayhew, 19 Bom. 293 ... 361
Mazhar Rai *v.* Ramgat Singh, 18 All. 290 ... 642
McAdam, In the Goods of, 23 Calc. 187 ... 984
McIntosh *v* Jharu Molla, 22 Calc. 454 ... 636
Meakin, In re, 21 Bom 137 456
Meghai *v.* Sheobhik, 18 All. 353 130, 223
Meherban Rawoot *v.* Behari Lal Barik, 23 Calc. 679 927
Mewa Kuar *v* Banarsi Prasad, 17 All. 533 1062
Miajan *v.* Minnat Ali, 24 Calc. 521 ... 1117
Mihin Lal *v.* Imtiaz Ali, 18 All. 332 ... 920
Milan Khan *v.* Sagai Bepari, 23 Calc. 347. 49. 1135
Miller *v.* Madho Das, 19 All. 76; L. R. 23 I. A. 106 560

Col.

Minakshi Ammal *v.* Kalianarama Rayer, 20 Mad. 349 1344
Minakshisundrum Pillai *v.* Ayyathorai, 18 Mad. 136 814
Minatoonnessa Bibee *v.* Khatoonnessa Bibee, 21 Calc. 479 989
Mingale Antone Kane *v.* Ramchandra Baje, 19 Bom. 694 1252
Mir Ali Mahomed Patel *v.* Biharilal Suklal, 21 Bom. 273 75
Misri Lal *v.* Lachmi Narain Bajpie, 23 Calc. 350 211
Modhu Sudan Singh *v.* Rooke, 25 Calc. 1; L. R. 24 I. A. 164 ... 527, 639
Mohabir Prosad Singh *v.* Adhikari Kunwar, 21 Calc. 473 664
Mohamdi Jan *v.* Baij Nath Singh *alias* Baiju Singh, 21 Calc. 311 790
Mohamed Abdul Hafiz *v.* Latif Hosein, 24 Calc. 524 617
Mohan *v.* Tukaram, 21 Bom. 63... ... 63
Moher Sheikh *v.* Queen-Empress, 21 Calc. 392 388, 389, 399, 1134
Mohesh Chunder Ghose *v.* Saroda Prosad Singh, 21 Calc. 433 644
Mohib Ali Khan *v.* Martin, 16 All. 51 ... 40
Mohima Chandra Roy Chowdhry *v.* Atul Chandra Chakravarti Chowdhry, 24 Calc. 540 ... ... 870, 1343
Mohima Chunder Bhuttacharjee *v.* Nobin Chunder Roy, 23 Calc. 49 724
Mohini Mohun Roy *v.* Promoda Nath Roy, 24 Calc. 256 900
Mohun Pershad Narain Singh *v.* Kishen Kishore Narain Singh, 21 Calc. 344 522, 661
Moidin Kutti *v.* Beevi Kutti Ummah, 18 Mad. 38 ... ... 678, 811
Mokunda Bullavkar *v.* Bhogaban Chunder Das, 21 Calc. 514 1330
Mon Mohini Goopta *v.* Raghoonath Misser, 23 Calc. 209 648
Morgan, In the Matter of the Petition of, 18 All. 238 361
Moroba Ramchandra *v.* Ghanasham Nilkant Nadkarni, 19 Bom. 301 ... 745
Moro Mahadev *v.* Anant Bhimaji, 21 Bom. 821 558
Moro Narain Joshi *v.* Balaji Raghunath, 19 Bom. 809 740
Motabhai Motilal *v.* Surat City Municipality, 20 Bom. 675 960
Motibai *v.* Karsandas Narayandas, 19 Bom. 123 662
Moti Gulabchand *v.* Mahomed Mehdi Tharia Topan, 20 Bom. 367 895
Moti Lal *v.* Karabuldin, L. R. 24 I. A. 170; 25 Calc. 179 761
Moti Lal *v.* Makund Singh, 19 All. 477 ... 757
Motilal Kashibhai *v.* Nana, 18 Bom. 35 ... 1241
Motilal Lalubhai *v.* Ratilal Mahiputram, 21 Bom. 170 527
Motilal Mangalji *v.* Parashotam Nandlal, 18 Bom. 92 1040
Moti Ram *v.* Jeth Mal, 16 All. 313 ... 1281
Motiram Raghunath *v.* Bhivraj, 20 Bom. 745 183
Moti Singh *v.* Kaunsilla, 16 All. 308 ... 1295
Moti Singh *v.* Ramohari Singh, 24 Calc. 699 ... . 582, 714

Col.

Motlibai *v.* Cuverji Hirji, 20 Bom. 124 ... 125
Mubarak Husain *v.* Bihari, 16 All. 306 ... 1067
Muchiram Barik *v.* Ishan Chunder Chuckerbutty, 21 Calc. 568 1280
Muhammad *v* Fatteh Muhammad, 22 Calc. 324; L. R. 22 I. A. 4 ... 797, 967
Muhammad Abdul Majid *v.* Muhammad Abdul Aziz, 19 All 155; L. R. 24 I. A. 22 829
Muhammad Ali Jan *v.* Faiz Baksh, 18 All. 361 264
Muhammad Ali Khan *v.* Puttan Bibi, 19 All. 129 138
Muhammad Baksh *v.* Mana, 18 All. 334 ... 925
Muhammad Husain *v.* Badri Prasad, 17 All. 423 266
Muhammad Husen Ali Khan *v.* Dharam Singh, 18 All. 31 ... 854, 1154
Muhammad Husen Ali Khan *v.* Thakur Dharam Singh, 18 All. 31 ... 854, 1154
Muhammad Ikramuddin *v.* Najiban, 19 All. 95; L. R. 23 I. A. 167 1007
Muhammad Islam *v.* Muhammad Ashan, 16 All. 237 746
Muhammad Karimullah Khan *v.* Amani Begam, 17 All. 93 792
Muhammad Mahmud Ali *v.* Kalyan Das, 18 All. 189 335
Muhammad Mumtaz Ali Khan *v.* Sheoruttangir, 23 Calc. 934; L. R. 23 I. A. 75 ... 835
Muhammad Nasiruddin *v.* Abul Hasan, 16 All. 300 803
Muhammad Said Khan *v.* Payag Sahu, 16 All. 228 177
Muhammad Sirajul Haq *v.* Imamuddin, 19 All. 104 ... ... 14, 1297
Muhammad Suleman Khan *v.* Muhammad Yar Khan, 17 All. 39 746
Muhammad Yunus Khan *v.* Muhammad Yusuf, 19 All. 334 ... 803, 804
Muhammad Yusuf, In the Matter of the Petition of, 18 All. 196 53
Muhammad Yusuf *v.* Himalaya Bank, 18 All. 198 ... ... 694, 956
Muhammad Yusufuddin *v.* Queen-Empress, 25 Calc. 20; L. R. 24 I. A. 137 ... 624
Muhammed Alim Oollah Sahib *v.* Secretary of State for India, 17 Mad. 162 ... 273
Mukarrab Husain *v.* Hurmat-un-nissa, 18 All. 52 171
Mukta *v.* Dada, 18 Bom. 216 727
Mukti Bewa *v.* Jhotu Santra, 24 Calc. 53 ... 224
Mukhi Haji Rahmuttulla *v.* Coverji Bhuja, 23 Calc. 546 691
Mukund Babu Vethe, In re, 19 Bom. 72 ... 1338
Mulji Lala *v.* Lingu Makaji, 21 Bom. 201. 387, 690, 1223
Mulla Abdul Hussein *v.* Sakhinaboo, 21 Bom. 456 416
Mullapudi Balakrishnayya *v.* Venkatanarasimha Appa Rau, 19 Mad. 329 ... 1209
Mullick Kefait Hossein *v.* Sheo Pershad Singh, 23 Calc. 821 685
Muncherji Bomanji Panthaki *v.* Dorabji Jehangir Randiva, 19 Bom. 775 ... 705
Muniappa Naik *v.* Subramania Ayyan, 18 Mad. 437 ... ... 76, 1170
Municipal Commissioner for City of Bombay *v.* Abdul Huq, 18 Bom. 184 33, 118

Col.

Municipal Commissioners *v.* Sarangapani Mudaliar, 19 Mad. 154 743
Municipal Corporation of Bombay *v.* Cuverji Hirji, 20 Bom. 124 125
Municipal Council of Nellore *v.* Rangayya, 19 Mad. 10 768
Municipality of Bombay *v.* Shapurji Dinsha, 20 Bom. 617 117
Municipality of City of Poona *v.* Vaman Rajaram Gholap, 19 Bom. 797 ... 1133
Municipality of Sholapur *v.* Sholapur Spinning and Weaving Co., 20 Bom. 732 ... 111
Munisami Reddi *v.* Arunachala Reddi, 18 Mad. 265 696
Munni Ram Chowdhry *v.* Bishen Perkash Narain Singh, 24 Calc. 878 42
Murari *v.* Tayana, 20 Bom. 286 485
Murari Das *v.* Collector of Ghazipur, 18 All. 313 416
Murray *v.* Queen-Empress, 21 Calc. 103 ... 227
Murti *v.* Bhola Ram, 16 All. 165 1061
Mussoorie Bank *v.* Himalaya Bank, 16 All. 53 ... ... 218, 1106
Mutasaddi *v.* Mani Ram, 19 All. 112 ... 433
Muthia Chetti *v.* Orr, 20 Mad. 224 ... 1033
Muthu *v.* Gangathara, 17 Mad. 95 ... 14
Muthu Ayyar *v.* Ramasami Sastrial, 20 Mad. 158 1167
Muthukutti Nayakan *v.* Acha Nayakhan, 18 Mad. 22 67
Muthunarayana Reddi, Balakrishna Reddi, 19 Mad. 306 159
Muthusami Ayyar *v.* Natesa Ayyar, 18 Mad. 464 424
Muthusami Mudaliar *v.* Nallakulantha Mudaliar, 18 Mad. 418 ... 61, 720, 1214
Muthusami Mudaliyar *v.* Simambedu Muthukumaraswami Mudaliyar, 19 Mad. 405; L. R. 23 I. A. 83 488
Muthuvadúganadha Tevar *v* Periasami Tevar, 19 Mad. 451; L. R. 23 I. A. 128 493
Muthuvijaya Raghunada Raju Tevar *v.* Chockalingam Chetti, 19 Mad. 335 ... 839
Muthu Vijia Raghunatha Ramachandra Vacha Mahali Thurai *v.* Venkata Nellaw Chetti, 20 Mad. 35 335
Muzhar Hossein *v.* Bodha Bibi, 17 All. 112; L. R. 22 I. A. 1 51

Nabishah, In re, 19 Bom. 714 ... 49, 1113
Nafar Chandra Pal Chowdhry *v.* Hazari Nath Ghose, 22 Calc. 748 note ... 647
Nafar Chandra Pal Chowdhuri *v.* Ram Lal Pal, 22 Calc. 742 647
Nagamma *v.* Virabhadra, 17 Mad. 392 ... 509
Nagamoney Mudaliar *v.* Janakiram Mudaliar, 18 Mad. 142 663
Nagappa Chetti, In re, 18 Mad. 472 ... 763
Nagardas Saubhagyadas *v.* Ahmedkhan, 21 Bom. 175 ... ... 313, 1304
Nagarji Trikamji, In re, 19 Bom. 340 345, 1230
Nagar Pragji *v.* Jivabhai Bavaji, 19 Bom. 80 407
Nagusha *v.* Municipality of Sholapur, 18 Bom. 19 114
Najju Khan *v.* Imtiazuddin, 18 All. 115 ... 264
Nakchedi Bhagat *v.* Nakchedi Misr, 18 All. 329 377
Nakchedi Ram *v.* Ram Charitar Rai, 19 All. 191 1271

Col.

Nallakaruppa Settiar *v.* Mahomed Iburam Saheb, 20 Mad. 112 436
Nallappa Reddi *v.* Ramalingachi Reddi, 20 Mad. 250 ... ... 1052, 1126
Namasivaya Gurukkal *v.* Kadir Ammal, 17 Mad. 168 ... ... 242, 315, 1097
Namasivayam Pillai *v* Nellayappa Pillai, 18 Mad. 43 1306
Namdev *v.* Ramchandra Gomaji Marwadi, 18 Bom. 37 733
Nam Narain Singh *v.* Lala Roghunath Sahai, 22 Calc. 467 413
Nana *v.* Appa, 20 Bom. 627 338
Nanchand *v.* Vithu, 19 Bom. 258 ... 414
Nandan Prasad *v.* Changur, 16 All. 368 ... 1283
Nand Kishore Lal *v.* Ahmad Ata, 18 All. 69 910.
Naoroji Nusserwanji Thoonthi *v.* Sidick Mirza, 20 Bom. 636 ... 319, 385
Narain Das *v.* Hazari Lal, 18 All. 238 1078
Naraini Kuar *v.* Makhan Lal, 17 All. 526. 672, 933
Narana Maiya *v.* Vasteva Karanta, 17 Mad. 203 529
Naranappa *v.* Samacharlu, 19 Mad. 382 ... 1278
Naranayyan *v.* Nageswarayyan, 17 Mad. 389. 443
Naranji Morarji *v.* Haridas Navalram, 18 Bom. 458 1164
Narasamma *v.* Subbarayudu, 18 Mad. 364 ... 1047
Narasimha Charyulu *v.* Appa Rau, 18 Mad. 122 1224
Narasimha Naidu *v.* Ramasami, 18 Mad. 478 ... ... 336, 697
Narasimha Razu *v.* Veerabhadra Razu, 17 Mad. 287 ... ... 476, 494
Narasimma Chariar *v.* Sinnavan, 20 Mad. 365 965
Narayan *v.* Ganpat, 21 Bom. 619 ... 853
Narayana Kothan *v.* Kalianasundaram Pillai, 19 Mad. 219 1169
Narayanamma *v.* Kamakshamma, 20 Mad. 21 ... ... 780, 874
Narayanan Chetti *v.* Arunachellam Chetti, 19 Mad. 140 54
Narayanan Nambudri *v.* Damodaran Nambudri, 17 Mad. 189 780
Narayanasami *v.* Kuppusami, 19 Mad. 497 ... 138
Narayanasami Gramani *v.* Periathambi Gramani, 18 Mad. 460 1325
Narayanasami Naidu *v.* Narayana Rau, 17 Mad. 62 ... ... 332, 583
Narayan Ballal *v.* Secretary of State for India, 20 Bom. 803 ... 115, 122
Narayan Bhaskar *v.* Balaji Bapuji, 21 Bom. 248 ... ... 1195, 1209
Narayan Coomari Debi *v.* Shajani Kanta Chatterjee, 22 Calc. 14 428
Narayan Dasappa *v.* Ali Saiba, 18 Bom. 603 645
Narayandas Sakharam *v.* Kondi, 19 Bom. 202 921
Narayani Dasi *v.* Administrator-General of Bengal, 21 Calc. 683 ... 274, 543
Narindra Bahadur Pal *v.* Khadim Husain, 17 All. 581 ... ... 580, 713
Narna *v.* Anant, 19 Bom. 807 595
Nasir Ali Fakir *v.* Meher Ali, 22 Calc. 830 ... 43
Nathekha *v.* Abdul Ali, 18 Bom. 449 817, 1248
Nathmull Narsingdas *v.* Malharrao Holkar, 19 Bom. 350 573
Nathubhai Mulchand *v.* Nana Babu, 19 Bom. 544 ... ... 407, 1246

Col.

Nathu Pandu *v.* Budhu Bhika, 18 Bom., 537 ... ... 1059, 1087
Nathuram Siviji Sett *v.* Kutti Haji, 20 Mad. 446 1074
Nathu Singh *v.* Gumani Singh, 18 All. 320... 324
Nathu Wilson *v.* MacAfee, 19 All. 131 ... 36
Natthu Singh *v.* Gulab Singh, 17 All. 167 ... 715
Naunihal Bhagat *v.* Rameshar Bhagat, 16 All. 328 653
Navalchand Nemchand *v.* Amichand Talakchand, 18 Bom. 734 684
Navazbai *v.* Pestonji Ratanji, 21 Bom. 400... 427
Nawaz Jung *v.* Rustomji Nanabhoy, 20 Bom. 704 ... ... 557, 1000, 1043
Nazar Ali *v.* Kedar Nath, 19 All. 308 ... 698
Nedaram Thakur *v.* Joonab, 21 Calc. 248 ... 130
Net Lall Sahoo *v.* Kareem Bux, 23 Calc. 686 833, 1161
Newaz Ali *v.* Ram Ballabh Chakravarti, 21 Calc. 916 note 978
Nicholas *v.* Asphar, 24 Calc. 216 372, 1083
Nilakandhen *v.* Padmanabda, 14 Mad. 153 ... 811
Nilakandhen Nambudirapad *v.* Padmanabha Revi Varma, 18 Mad. 1 ; L. R. 21 I. A. 128 811
Nilmadhub Sarkar *v.* Brojo Nath Singha, 21 Calc. 236 1081
Nilmony Singh *v.* Jagabandhu Roy, 23 Calc. 536 ... ... 741, 1299
Nilratan Sen *v.* Jogesh Chunder Bhuttacharjee, 23 Calc. 983 225
Nim Chand Baboo *v.* Jagabundhu Ghose, 22 Calc. 21 704
Ningapa *v.* Dodapa, 21 Bom. 585 ... 819
Ningappa *v* Shivappa, 19 Bom. 323. 594, 1057, 1211
Nirbhai Das *v.* Rani Kuar, 16 All. 274 ... 52
Nistarini Debi *v.* Ghose, 23 Calc. 44 ... 784
Nitr Pal Singh *v.* Jai Pal Singh, 19 All. 1 ; L. R. 23 I. A. 147 477
Nittomoye Dassee *v.* Soobul Chunder Law, 23 Calc. 117 586
Nityananda Patnayudu *v.* Radha Cherana Deo, 20 Mad. 371 580
Nityanund Ghose *v.* Mohendro Kristo Ghose, 21 Calc. 181 note 917
Nizamuddin Shah *v.* Anandi Prasad, 18 All. 373 799
Nobin Chand Nuskar *v.* Bansenath Paramanick, 21 Calc. 722 98
Norendra Nath Pahari *v.* Bhupendra Narain Roy, 23 Calc. 374. 171, 530, 678, 689, 751, 755, 835
Norendra Nath Sircar *v.* Kamalbasini Dasi, 23 Calc. 563 ; L. R. 23 I. A. 18 532, 1231
Nownit Lal *v.* Radha Kristo Bhuttacharjee, 22 Calc. 738 1147
Nritto Lall Mitter *v.* Rajendro Narain Deb, 22 Calc. 562 1219
Nuffer Chunder Ghose *v.* Nund Lal Gossyamy, 22 Calc. 751 note 647
Nundo Lall Mullick, In the Goods of, 23 Calc. 908 ... ... 22, 426

Oliver *v.* Anantharamayyan, 18 Mad. 30 ... 777
Oliver *v.* Anantharamayyar, 20 Mad. 498 ... 1143
Onkar Singh *v.* Bhup Singh, 16 All. 496 ... 620
Oriental Government Security Life Assurance Co. *v.* Sarat Chandra Chatterji, 20 Bom. 99 575

	Col.
Orr *v.* Fischer, 19 Mad. 292	771
Orr *v.* Muthia Chetti, 17 Mad. 501 ...	1033
Orr *v.* Neelamegam Pillai, 18 Mad. 395 ...	1196
Orr *v* Sundra Pandia, 17 Mad. 255 ...	695
Orr *v.* Raman Chetti, 18 Mad. 320 ...	366
Oula *v.* Beepathee, 17 Mad. 209	921
Pachkauri *v.* Queen-Empress, 24 Calc. 686 ..	1135
Padammah *v.* Themana Ammah, 17 Mad. 232	322
Padgaya *v.* Baji Babaji Moholkar, 20 Bom. 549	3
Padmanabh Bombshenvi *v.* Khemu Komar Naik, 18 Bom. 684	1159
Pakhwanti Dai *v.* Indra Narain Singh, 23 Calc. 201	31
Pakiam Pillai *v.* Innasi Fernand, 19 Mad. 458	1011
Palakdhari Rai *v.* Manners, 23 Calc. 179	1116, 1211
Palamalai Padayachi *v.* Shanmuga Ausari, 17 Mad. 302	615
Palaniandi Tevan *v.* Puthirangonda Nadan, 20 Mad. 389	1000
Palaniappa Chetti *v.* Dorasami Ayyar, 18 Mad. 402	887, 1114
Palaniappa Chetti *v.* Periakaruppan Chetti, 17 Mad. 262	1126
Palani Chetti *v.* Subramanyan Chetti, 19 Mad 257	436
Palani Konan *v.* Masakonan, 20 Mad. 243 ...	517
Panchena Manchu Nayar *v.* Gadinhare Kumaranchath Padmanabhan Nayar, 20 Mad. 68	214
Pandharinath *v.* Mahabubkhan, 21 Bom. 98	975
Pandit Sardar *v.* Meajan Mirdha, 21 Calc. 378	100
Pandu *v.* Bhavdu, 21 Bom. 806	988
Pandu *v.* Vithu, 19 Bom. 140	724
Pandu Lakshman Masurekar *v.* Anpurna, 21 Bom. 793	742
Papamma Rao *v.* Vira Pratapa H. V. Ramachandra Razu, 19 Mad. 249; L. R. 23 I. A. 32	340
Paramananda Das *v.* Mahabeer Dossji, 20 Mad. 378 1343,	1346
Parashram *v.* Ganpat, 21 Bom. 533 ...	1043
Parashram *v.* Miraji, 20 Bom. 569 337,	1302
Parashram Harlal *v.* Govind Ganesh Porgaumkar, 21 Bom. 226 ... 73,	76
Parbati *v.* Niadar, 18 All. 129	263
Parbati Charan Chatterji. In the Matter of, 17 All. 498; L. R. 22 I. A. 193 ...	965
Parbhudas *v.* Fulba. 19 Bom 133 note ...	377
Pareman Dass *v.* Bhattu Mahton, 24 Calc. 672	505
Parot Bapalal Sevakram *v.* Mehta Harilal Surajram, 19 Bom. 631	487
Parshotam Bhaishankar *v.* Rumal Zunjar, 20 Bom. 196	333
Parshotam Lakhmiram *v.* Pema Harji, 21 Bom. 121	1194
Parshotam Vishnu *v.* Nana Prayag, 18 Bom. 109	1039
Parsidh Rai *v.* Raji Nami Rai, 18 All., 172 ...	63
Partap Singh *v.* Narain Das, 16 All. 375 ...	41
Parvathi Ammal *v.* Saminatha Gurukal, 20 Mad. 40	715
Parvathi Ammal *v.* Sundara Mudali, 20 Mad. 459	727
Parvati *v.* Ganpatrao Balal, 18 Bom. 177 ...	504
Parvatibayamma *v.* Ramakrishna Rau, 18 Mad. 145	379
Parvatishankar *v.* Ishvardas Jagjivandas, 19 Bom. 208	212
Paryag Rai *v.* Arju Mian, 22 Calc. 139 131,	222
Pasupati Mohapatra *v.* Narayani Dassi, 24 Calc. 537	1139
Patan Maria *v.* Babiram Dutt Barua, 24 Calc. 239	70
Patel Kilabhai Lallubhai *v.* Hargovan Mansukh, 19 Bom. 133	377
Patel Mafatlal Narandas *v.* Bai Parson, 19 Bom. 320 133,	672
Patel Ranchod Morar *v.* Bhikabhai Devidas, 21 Bom. 704 848,	1046
Pateshuri Partap Narain Singh *v.* Bhagwati Prasad, 17 All. 578 ... 136,	498
Pathan Alikhan Badlukhan *v.* Bai Panibai, 19 Bom. 832	1013
Pattabhiramayya Naidu *v.* Ramayya Naidu, 20 Mad 23	718
Paya Matathil Appu *v.* Kovamel Amina, 19 Mad. 151 861,	919
Payyath Nanu Menon *v.* Thiruthipalli Raman Menon, 20 Mad. 51 ... 810,	922
Peary Mohun Mukerjee *v.* Ambica Churn Bandopadhya, 24 Calc. 900	1090
Pedda Subbaraya Chetti *v.* Ganga Razulungaru, 20 Mad. 149	581
Percy *v.* Percy, 18 All. 375	464
Periakaruppan *v.* Palaniyandi, 18 Mad. 28 ...	1196
Perianayagam *v.* Krishna Chetti, 20 Mad. 470	807
Periaroyalu Reddi *v.* Royalu Reddi, 18 Mad. 434	616
Periavenkan Udaya Tevar *v.* Subramanian Chetti, 20 Mad. 239	690
Pershad Singh *v.* Ram Pertab Roy, 22 Calc. 77	103
Pertap Udai Nath Sahi Deo *v.* Masi Das, 22 Calc. 112	385
Perumal Ayyan *v.* Alagirisami Bhagavathar, 20 Mad. 245	723
Perumal Naik *v.* Saminatha Pillai, 19 Mad. 498	63
Perumal Udayar *v.* Krishnama Chettyar, 17 Mad. 251	1145
Perundevitayar Ammal *v.* Nammalvar Chetti, 18 Mad. 390	705
Pethaperumal Chetti *v.* Murugandi Servaigaran, 18 Mad. 466	1084
Phopi Ram *v.* Rukmin Kuar, 19 All. 327 note	994
Phul Chand *v.* Akbar Yar Khan, 19 All. 211	794
Pichuvayyangar *v.* Seshayyangar, 18 Mad. 214	341
Pirjada Ahmadmiya Pirmaya *v.* Sha Kalidas Kanji, 21 Bom. 544	863
Pokurmull Augurwallah, In the Goods of, 23 Calc. 980	277
Ponnambala Pillai *v.* Sundarappayyar, 20 Mad. 354	472
Ponnambala Tambiran *v.* Sivagnana Desika Gnana Sambandha Pandara Sannadhi, 17 Mad. 343; L. R. 21 I. A. 71 164,	339
Ponnayya Goundan *v.* Muthu Goundan, 17 Mad. 146	1305

Col.

Poona City Municipality *v.* Ramji Raghunath, 21 Bom. 250 1111
Poona City Municipality *v.* Vaman Rajaram Gholap, 19 Bom. 797 1133
Porthouse, In the Goods of, 24 Calc. 764 ... 1324
Prag Narain *v.* Mul Chand, 19 All. 535 246, 314
Pramatha Nath Sandal *v.* Dwarka Nath Dey, 23 Calc. 851 ... ... 387, 1130
Pran Nath Roy *v.* Mohesh Chandra Moitra, 24 Calc 546 ... ... 1101, 1127
Premanundo Shaha *v.* Brindabun Chung, 22 Calc. 994 304
Prem Chand Moonshee, In the Goods of, 21 Calc. 484 ... ... 52, 57
Premchand Moonshee, In the Goods of, 21 Calc. 832 1182
Premji Jivan Bhate *v.* Cassum Juma Ahmed, 20 Bom. 298 369
Prem Lall Mullick. In the Matter of the Petition of, 22 Calc. 1011 ; L. R. 22 I. A. 203 55
Premlall Mullick *v.* Sumbhoonath Roy, 22 Calc. 960 412
Premmoyi Choudhrani *v.* Preonath Dhur, 23 Calc. 636 921
Priag Nath Sah Deo *v.* Mura Munda, 24 Calc. 249 33
Prit Koer *v.* Mahadeo Pershad Singh, 22 Calc. 85 ; L. R. 21 I. A. 134 497
Profullah Chunder Bose *v.* Samiruddin Mondul, 22 Calc. 337... 95
Prosonnomoyi Dassi *v.* Sreenauth Roy, 21 Calc. 809 1157
Prosunno Kumar Adhikari *v.* Saroda Prosunno Adhikari, 22 Calc. 939 481
Prosunno Kumar Patra *v.* Udoy Sant, 22 Calc. 669 1257
Protap Chunder Sen *v.* Tunsook Dass, 23 Calc. 967 1201
Protap Narain Singh *v.* Rajendra Narain Singh, 24 Calc. 55 979
Pulin Chandra Roy *v.* Akbar Hossein, 21 Calc. 350 1019
Pullamma *v.* Pradosham, 18 Mad. 316 419, 696
Pullayya *v.* Ramayya, 18 Mad. 144 ... 726
Pundlik *v.* Achut, 18 Bom. 84 675
Purnamal Chund *v.* Venkata Subbarayalu, 20 Mad. 486 856
Purshotamdas Maneklal *v.* Bai Mani, 21 Bom. 610 1102
Purshotamdas Tribhovandas *v.* Purshotamdas Mangaldas, 21 Bom. 23... ... 511
Puthiandi Mammed *v.* Avalil Moidin, 20 Mad. 157 313
Pyari Lall Pal *v.* Narayan Mandal, 22 Calc. 746, note 647

Queen-Empress *v.* Abbi Reddi, 17 Mad. 402 299
Queen-Empress *v.* Abdul Kadar Sheriff Saheb, 20 Mad 8 1176
Queen-Empress *v.* Agha Muhammad Yusuf, 18 All. 88 1257
Queen-Empress *v.* Ajudhia, 17 All. 120 ... 1185
Queen-Empress *v.* Ajudhia Prasad, 17 All. 436 432
Queen-Empress *v.* Andi, 18 Mad. 228 ... 788
Queen-Empress *v.* Appaji bin Yadavrao, 21 Bom. 517 548
Queen-Empress *v.* Arumugam, 20 Mad. 189 ... ... 9, 397
Queen-Empress *v.* Ashwini Kumar Ghose, 23 Calc. 421 1313
Queen-Empress *v.* Bala Misra, 19 All. 311 ... 446
Queen-Empress *v.* Banka Patni, 23 Calc. 414 1004
Queen-Empress *v.* Basappa, 18 Mad. 394 ... 88
Queen-Empress *v.* Bhadu, 19 All. 119 ... 961
Queen-Empress *v.* Bharosa, 17 All. 123 ... 1185
Queen-Empress *v.* Bhashyam Chetti, 19 Mad. 209 ... ... 772, 990
Queen-Empress *v.* Bhawani, 18 All. 23 ... 446
Queen-Empress *v.* Bhimappa bin Ramanna, 19 Bom. 732 1110
Queen-Empress *v.* Bhutan, 16 All. 472 ... 132
Queen-Empress *v.* Bisheshar, 16 All. 124 ... 429
Queen-Empress *v.* Butchi, 17 Mad. 401 ... 1256
Queen-Empress *v.* Chanda, 18 All. 24 ... 946
Queen-Empress *v.* Chunni, 18 All. 497 ... 306
Queen-Empress *v.* Croft, 23 Calc. 174 ... 292
Queen-Empress *v.* Dada Hanmant Dani, 20 Bom. 794 281
Queen Empress *v.* Dalip, 18 All. 246 ... 945
Queen-Empress *v.* Dansang Dada, 18 Bom. 751 ... . 50, 1189
Queen-Empress *v.* Devji Govindji, 20 Bom. 215 1311, 1312
Queen-Empress *v.* Dhanjibhai Edulji, 20 Bom. 348 1232
Queen-Empress *v.* Duma Baidya, 19 Mad. 483 ... ... 874, 1184
Queen-Empress *v.* Durga, 16 All. 84 .. 1335
Queen-Empress *v.* Fakira, 17 Mad 103 ... 375
Queen-Empress *v.* Fakrudeen, 17 Mad. 278... 772
Queen-Empress *v.* Fattah Chand, 24 Calc. 499 ... ... 296, 785
Queen-Empress *v.* Fazl Azim, 17 All. 36 ... 299
Queen-Empress *v.* Ganga Ram, 16 All. 136... 593
Queen-Empress *v.* Ganpatrao Ramchandra, 19 Bom. 105 625
Queen-Empress *v.* Gasper, 22 Calc. 935 ... 786
Queen-Empress *v.* Gharya, 19 Bom. 728 ... 234
Queen-Empress *v.* Gobinda, 17 All. 576 ... 1232
Queen-Empress *v.* Gopal Goundan, 19 Mad. 269 300
Queen-Empress *v.* Gunning, 21 Calc. 782 ... 889
Queen-Empress *v.* Hari Savba, 20 Bom. 145 48
Queen-Empress *v.* Hormusji Nowroji Lord, 19 Bom. 715 943
Queen-Empress *v.* Imam Ali Khan, 23 Calc. 252 .. .. 299, 1313
Queen-Empress *v.* Ishri, 17 All. 67 1034, 1185
Queen-Empress *v.* Jabanulla, 23 Calc. 975 .. 50
Queen-Empress *v.* Jagannayakulu, 18 Mad. 46 780
Queen-Empress *v.* Jagat Chandra Mali, 22 Calc. 50 ... ... 232, 1189
Queen-Empress *v.* Jahandi, 23 Calc. 249 ... 1038
Queen-Empress *v.* Janardhan Damodhar Dikshit, 19 Bom. 703 347
Queen-Empress *v.* Javecharam, 19 Bom. 363. 5, 234
Queen-Empress *v.* Jogendra Nath Mukerjee, 24 Calc. 320 ... ... 941, 1334
Queen-Empress *v.* Kader Nasyer Shah, 23 Calc. 604 559
Queen-Empress *v.* Kahanji, 18 Bom. 758 ... 938
Queen-Empress *v.* Kalian, 19 Mad. 310 ... 375

Col.

Queen-Empress v. Kaliyani, 19 Mad. 356 ... 306
Queen-Empress v. Kalyan Singh, 16 All. 409 80
Queen-Empress v. Kanappa Pillai, 20 Mad. 387 1348
Queen-Empress v. Kandappa Goundan, 20 Mad. 88 5
Queen-Empress v. Karamdi, 23 Calc. 250 ... 1037
Queen-Empress v. Karigowda, 19 Bom. 51, 47, 346, 430
Queen-Empress v. Karuppa Udayan, 20 Mad. 87 48
Queen-Empress v. Kattayan, 20 Mad. 235 ... 1318
Queen-Empress v. Kayemullah Mandal, 24 Calc. 429 787
Queen-Empress v. Kellie, 17 All. 153 ... 143
Queen-Empress v. Keshavlal Jeykrishna, 21 Bom. 536 225
Queen-Empress v. Kushali Ram, 18 All. 158 627
Queen-Empress v. Krishtappa, 20 Mad. 31 ... 239
Queen-Empress v. Kuppayyar, 18 Mad. 51 ... 979
Queen-Empress v. Kutrapa, 18 Bom. 440. 1029, 1185
Queen-Empress v. Kutti Ali, 20 Mad. 16 ... 771
Queen-Empress v. Lachmi Kant, 18 All. 301 50, 1189
Queen-Empress v. Lakshmi Nayakan, 19 Mad. 238 48, 131, 222, 1112
Queen-Empress v. Latifkhan, 20 Bom. 394 ... 4
Queen-Empress v. Lester, 20 Bom. 165 ... 235
Queen-Empress v. Madhavrao, 19 Bom. 735 1310
Queen-Empress v. Mahabir, 18 All. 78 234
Queen-Empress v. Mahalabuddin, 22 Calc. 761 296
Queen-Empress v Manick Chandra Sarkar, 24 Calc. 492 ... ... 906, 990
Queen-Empress v. Manikam, 19 Mad. 263. 784, 1333
Queen-Empress v. Mannatha Achari, 17 Mad. 260 807
Queen-Empress v. Mannu, 19 All. 390 10, 391
Queen-Empress v. Marian Chetti, 17 Mad. 118. 970
Queen-Empress v. Mata Prasad, 19 All. 249... 1263
Queen-Empress v. Mirchia, 18 All. 364 ... 1
Queen-Empress v. Moss, 16 All. 88 83, 294, 388, 399, 1178
Queen-Empress v. Motha, 20 Mad. 339 ... 1179
Queen-Empress v. Mugappa, 18 Bom. 377 ... 432
Queen-Empress v. Muppan, 18 Mad. 401 ... 375
Queen-Empress v. Muthayya, 20 Mad. 457 ... 1318
Queen-Empress v. Nageshappa Pai, 20 Bom. 543 ... ... 687, 1112, 1175
Queen-Empress v. Nand Kishore, 19 All. 305 431
Queen-Empress v. Nanjunda Ran, 20 Mad. 79 429
Queen-Empress v. Nannhu, 17 All. 241 ... 595
Queen-Empress v. Nasiruddin, 16 All. 207 ... 389
Queen-Empress v. Nathu Khan, 23 Calc. 252 299, 1313
Queen-Empress v. O'Brien, 19 All. 111 ... 626
Queen-Empress v Pahuji, 19 Bom. 195 ... 236
Queen-Empress v. Palayathan, 18 Mad. 48 ... 788
Queen-Empress v. Pandeh Bhat. 19 All. 506 596
Queen-Empress v. Parashram Yeshwant, 20 Bom. 193 889
Queen-Empress v. Paul, 20 Mad. 12 ... 824
Queen-Empress v. Pherozsha Pestonji, 18 Bom. 442 ... — ... 783
Queen-Empress v. Pirbhu. 17 All. 524 ... 236
Queen-Empress v. Pirio Kalio, 18 Bom. 428 109
Queen-Empress v. Pukot Kotu, 19 Mad. 349 1004
Queen-Empress v. Punna, 18 All. 96 ... 223
Queen-Empress v. Pursotam Dass Morarjee, 24 Calc. 193 143

Col.

Queen-Empress v. Ragho Mahadu, 12 Bom.... 612 123
Queen-Empress v. Raiji Daji, 18 Bom. 380 ... 786
Queen-Empress v. Ramalingam, 20 Mad. 445 299
Queen-Empress v. Ram Chandar, 19 All. 493 882
Queen-Empress v. Ramchandra Govind ... Harshe, 19 Bom. 749 210, 400, 1312
Queen-Empress v. Ram Dei. 18 All. 350 ... 625
Queen-Empress v Ram Sundar, 19 All. 109. 625, 633
Queen-Empress v. Rappel, 18 Mad. 490 ... 1185
Queen-Empress v. Raru Nayar, 19 Mad. 482 236
Queen-Empress v. Rayapadayachi, 19 Mad. 240 304
Queen-Empress v. Razai Mia, 22 Calc. 817 232, 559
Queen-Empress v. Rego Montopoulo, 19 Bom. 741 623
Queen-Empress v. Robinson, 16 All. 212 47, 824
Queen-Empress v. Sadanand Narayan, 18 Bom. 364 1118
Queen-Empress v. Sadashiv Atmaram, 18 Bom. 205 344
Queen-Empress v. Sagal Samba Sajao, 21 Calc. 642 ... ... 231, 1335
Queen-Empress v. Samniadha Pillai, 19 Mad. 464 887
Queen-Empress v. Schade, 19 All. 465 ... 788
Queen-Empress v. Seshadri Ayyangar, 20 Mad. 383 295
Queen-Empress v. Shakir Ali, 19 All. 502 ... 1334
Queen-Empress v. Sheo Dial Mal, 16 All. 389 4
Queen-Empress v. Shidgauda. 18 Bom. 97 ... 289
Queen-Empress v. Siunai Goundan, 20 Mad. 388 1348
Queen-Empress v. Sita, 18 Bom. 212 ... 281
Queen-Empress v. Sitanath Mandal, 22 Calc. 1006 289
Queen-Empress v. Sri Churu Chungo, 22 Calc. 1017 ... ... 1230, 1257
Queen-Empress v. Sri Lal, 17 All. 166 ... 938
Queen-Empress v. Subbanna, 19 Mad. 241 ... 768
Queen-Empress v. Subbaraya Pillai, 18 Mad. 487 1178
Queen-Empress v. Subbarayar, 19 Mad. 3 ... 5
Queen-Empress v. Subhan, 18 All. 395 ... 1058
Queen-Empress v. Subramania Ayyar, 20 Mad. 385 1029
Queen-Empress v. Subramanian, 20 Mad. 1... 941
Queen-Empress v. Sukee Raur, 21 Calc. 97 ... 946
Queen-Empress v. Taj Khan, 17 All. 57 ... 390
Queen-Empress v. Tatya, 20 Bom. 795 ... 234
Queen-Empress v. Teja, 17 All. 86 ... 310
Queen-Empress v. Thommayya Chetti, 17 Mad. 397 970
Queen-Empress v. Tirunarasimha Chari, 19 Mad. 18 1179
Queen-Empress v. Tomijuddi, 24 Calc. 757... 983
Queen-Empress v. Tota Ram, 16 All. 276 ... 69
Queen-Empress v. Umrao Singh, 16 All. 437 309
Queen-Empress v. Vasta Chela, 19 Bom. 247 453
Queen-Empress v. Vasudevayya, 19 Mad. 354 48
Queen-Empress v. Veeradu, 18 Mad. 230 ... 824
Queen-Empress v. Venkataram Jetti, 20 Mad. 444 1184
Queen-Empress v. Venkataratnam Pantulu, 19 Mad. 14 9
Queen-Empress v. Virappa Chetti, 20 Mad. 433 887

Col.

Queen-Empress *v.* Virasami, 19 Mad. 375 ... ... 302, 431
Queen-Empress *v.* Visram Babaji, 21 Bom. 495 233
Queen-Empress *v.* Warubai, 20 Bom. 540 ... 595
Queen-Empress *v.* Yohan, 17 Mad. 391 824
Queen-Empress on the Prosecution of Thomson *v.* Gunning, 21 Calc. 782 ... 889

Rabiabai *v.* Mahomed Ismail Khan, 21 Bom. 723 ; L. R. 24 I. A. 128 1007
Rachawa *v.* Shivayogapa, 18 Bom. 679 332, 1214
Radha Madhub Santra *v.* Lukhi Narain Roy Chowdhry, 21 Calc. 428 1330
Radhan Singh *v.* Kuarji Dichhit, 18 All. 98 393
Radha Pershad Singh *v.* Budhu Dashad, 22 Calc. 938 1188
Radha Pershad Singh *v.* Ramkhelawan Singh, 23 Calc. 302 1087
Ragavendra Ayyar *v.* Karuppa Goundan, 20 Mad. 33 698
Ragavendra Rau *v.* Jayaram Rau, 20 Mad. 283 511
Raghavendra *v* Kashinathbhat, 19 Bom 717 894
Ragho *v.* Narayan, 21 Bom 60 1280
Raghubar Dial *v.* Madan Mohan Lal, 16 All. 3 710
Raghu Nath Das *v.* Jagdip Narain Chowdhry. 24 Calc. 152 647
Raghunath Gosavi *v.* Narayan Sitaram, 21 Bom. 556 371
Raghunath Lalman *v.* Nathu Hirji Bhate, 19 Bom. 626 249
Raghunathji Maharaj *v.* Shah Lal Chand, 19 All. 330 ... ... 956, 959
Raghunath Makund, In re, 19 Bom. 372 ... 119
Raghunath Sahay Singh *v.* Lalji Singh, 23 Calc. 397 ... ... 747, 1154
Raghunundun Misser *v* Kallydut Misser, 23 Calc. 690 755
Raghu Singh *v.* Abdul Wahab, 23 Calc. 442 787
Rahamtullah Sahib *v.* Rama Rau, 17 Mad. 373 1012
Rahim Ali Khan *v.* Phul Chand, 18 All. 482 158
Rahim Bakhsh *v.* Amiran Bibi, 18 All. 219 869
Rahim Khan *v.* Fatu Bibi Bintesaheb Khan, 21 Bom. 118 ... ... 799, 1230
Rahmatullah, In the Matter of the Petition of, 17 All. 485 786
Rai Isri Pershad *v.* Queen-Empress, 23 Calc. 621 388
Raiji Jadav *v.* Bai Mathura, 19 Bom. 658 ... 467
Rajah of Venkatagiri *v.* Narayana Reddi, 17 Mad. 456 1048
Rajam Chetti *v.* Seshayya, 18 Mad. 236 ... 1200
Rajaram *v.* Ganesh Hari Karkhanis, 21 Bom. 91 ... ... 1084, 1211
Rajaram Pandey *v.* Raghubansman Tewary, 24 Calc. 563 697
Rajaram Singhji *v.* Chunni Lal, 19 All. 205 862, 1154
Raja Singh *v.* Kooldip Singh, 21 Calc. 989... 829
Raj Chunder Mozumdar *v.* Gour Chunder Mozumdar, 22 Calc. 176 1180
Rajendra Nath Haldar *v.* Nilratan Mitter. 23 Calc. 958 1169
Rajendro Narain Roy *v.* Chunder Mohun Misser, 23 Calc. 128 75

Col.

Rajendro Nath Mukerji, In the Matter of, 18 All. 174 966
Rajeshwar Pershad Singh *v.* Burta Koer, 21 Calc. 807 103
Rajeswara Rau *v.* Hari Babandhu, 19 Mad. 162 759
Rajit Ram *v.* Katesar Nath, 18 All. 396 ... 957
Rajjo Kuar *v.* Debi Dial, 18 All. 432 ... 869
Rajkeshwar Deo *v.* Bunshidhur Marwari, 23 Calc. 873 448
Raj Kumar *v.* Bisheshar Nath, 16 All. 270 419, 864
Raj Kumari Debi *v* Bama Sundari Debi, 23 Calc. 610 .. ... 301, 389
Raj Lakhi Ghose *v.* Debendra Chandra Mojumdar, 24 Calc. 686 1055
Rajmal Manickchand *v.* Hanmant Anyaba, 20 Bom. 697 190
Rajmal Motiram Marvadi *v.* Krishna valad Mahipati Hagadekar, 20 Bom. 208 ... 350
Rakhma *v.* Tulaji, 19 Bom. 675 ... 820
Rama *v.* Sesha, 17 Mad. 85 876
Rama Ayyan *v.* Sreenivasa Pattar, 19 Mad. 230 ... ... 163, 176
Ramabai *v.* Rangrav, 19 Bom. 614 ... 519
Ramachandra Rau *v.* Kandasami Chetti, 18 Mad. 498 218
Ramacharya *v.* Anantacharya, 18 Bom. 389 515
Ramacharya *v.* Anantacharya, 21 Bom. 314 424
Ramalinga Chetti *v.* Raghunatha Rau, 20 Mad. 418 1092
Ramamirtha Ayyan *v.* Gopala Ayyan, 19 Mad. 433 449
Raman, In re, 19 Mad. 350 1301
Raman *v.* Kunhayan, 17 Mad. 304 ... 377
Ramanadhan Chetti *v.* Alkonda Pillai, 18 Mad. 500 856
Rama Nand *v.* Surgiani, 16 All. 221 475, 490
Ramananda *v.* Raikishori Barmani, 22 Calc. 347 495
Ramanayya *v.* Rangappayya, 17 Mad. 144 ... 73
Raman Lalji Maharaj *v.* Gopal Lalji Maharaj, 19 All. 428 515
Raman Lalji Maharaj *v.* Gopal Lalji Maharaj, 19 All. 428 706
Raman Menon *v.* Chathunni, 17 Mad. 184 ... 813
Raman Nayar *v.* Subramanya Ayyan, 17 Mad. 87 344
Ramanuja Ayyangar *v.* Narayana Ayyangar, 18 Mad. 374 ... 251, 682, 1095
Ramappa Udayan *v.* Arumugath Udayan, 17 Mad. 182 489
Rama Reddi *v.* Appaji Reddi, 18 Mad. 248 579, 713
Rama Reddi *v.* Papi Reddi, 19 Mad. 199 ... 34
Ramasami *v.* Sami, 17 Mad. 96 1085
Ramasami *v.* Streeramulu Chetti, 19 Mad. 149 701
Ramasamia Pillai *v.* Adinarayana Pillai, 20 Mad. 465 1267
Ramasami Ayyar *v.* Municipal Council of Salem, 18 Mad. 183 767
Ramasami Bhagavathar *v.* Nagendrayyan, 19 Mad. 31 213
Ramasami Chetti *v.* Mangaikarasu Nachiar 18 Mad. 113 473
Ramasami Kamaya Naik *v.* Sundaralingasami Ramaya Naik, 17 Mad. 422 ... 492

Col.

Ramasami Kottadiar *v.* Murugesa Mudali, 20 Mad. 452 568
Ram Autar *v.* Mahammad Mumtaz Ali, 24 Calc. 853; L. R. 24 I. A. 107 ... 836
Ramayya *v.* Venkataratnam, 17 Mad. 122 59, 162, 717, 1059
Rambhat *v.* Bababhat, 18 Bom. 250 ... 642
Ram Chandar *v.* Chandi Prasad, 19 All. 307 693
Ram Chand Chatterjee *v.* Hanif Sheikh, 21 Calc. 401 1336
Ramchandra Bhaskar Nanal *v.* Raghunath Bachashet Sonar, 20 Bom. 475 ... 630
Ram Chandra Das *v.* Monohur Roy, 21 Calc. 29 ... ... 977, 979
Ramchandra Govind Manik *v.* Sono Sadashiv Sarkhot, 19 Bom. 551 594
Ramchandra Kashi Patkar *v.* Damodhar Trimbak Patkar, 20 Bom. 467 263, 338
Ramchandra Narayan Kulkarni *v.* Draupadi, 20 Bom. 281 1108
Ramchandra Narayan Mantri *v.* Anant, 18 Bom. 433 643
Ramchandra Parsharam *v.* Bhagubai, 21 Bom. 42 965
Ramchandra Shankarbava Dravid *v.* Kashinath Narayan Dravid, 19 Bom. 271 ... 481
Ramchandra Subrao *v.* Raoji, 20 Bom. 351 421, 817
Ram Charan Bhagat *v.* Sheobarat Rai, 16 All. 418 158
Ram Chunder Ghose, In the Goods of, 24 Calc. 567 278
Ram Das *v.* Secretary of State for India, 18 All. 419 934
Ramdeo *v.* Cassim Mamoojee, 21 Calc. 173 ... 242
Ramdeo *v.* Pokhiram, 21 Calc. 419 ... 1200
Ram Dhan Singh *v.* Karan Singh, 18 All. 414 32
Ram Dial *v.* Indar Kuar, 16 All. 179 ... 418
Ram Din *v.* Rang Lal Singh, 17 All. 451 ... 1305
Ram Dyal Saligram *v.* Nurhurry Balkrishna, 18 Bom. 368 572
Rameswar Mahton *v.* Dilu Mahton, 21 Calc. 550 872
Ram Ghulan Singh *v.* Ram Behari Singh, 18 All. 90 497
Ramhari Sahu *v.* Madan Mohan Mitter, 23 Calc. 339 654, 744, 1107
Ramjeevan Koormi *v.* Durga Charan Sadhu Khan, 21 Calc. 979 223
Ramjewan Lal *v.* Dal Koer, 24 Calc. 406 ... 533
Ramji Morarji v. Ellis, 20 Bom. 167 ... 271
Ram Kanye Audhicary *v.* Cally Churn Dey, 21 Calc. 840 623
Ram Kawal Singh *v.* Ram Kishore Das, 22 Calc. 506 472
Ram Kishore Das *v.* Ram Kawal Singh, 22 Calc. 506 472
Ram Lal v. Tulsa Kuar, 19 All. 180 ... 862
Ram Lal Patak *v.* Dina Nath Patak, 23 Calc. 200 652
Ram Narain Rai *v.* Bakhtu Kuar, 16 All. 75 753
Ram Narain Singh *v.* Babu Singh, 18 All. 46 888
Ram Nath v. Badri Narain, 19 All. 148 ... 994
Ram Nath *v.* Bindraban, 18 All. 369 ... 893
Ram Newaz *v.* Ram Charan, 18 All. 49 158, 425
Rampartab Samrathrai *v.* Foolibai, 20 Bom. 767 ... ... 457, 500, 601, 663

Col.

Rampertab Mull *v.* Jakeeram Agurwallah, 23 Calc. 991 152
Ram Ranjan Chakerbati *v.* Ram Narain Singh, 22 Calc. 533; L. R. 22 I. A. 60 643
Ramranjan Chuckerbutty *v.* Nanda Lal Laik, 22 Calc. 478 1203
Ramrao Tatyaji Patil *v.* Babaji Dhondji Bibve, 20 Bom. 630 ... 818, 1248
Ram Ratan *v.* Lalta Prasad, 17 All. 483 ... 607
Ram Ravji Jambhekar *v.* Pralhaddas Subkarn, 20 Bom. 133 ... 546, 606, 684
Ram Saday Mukerjee *v.* Dwarkanath Mukerjee, 22 Calc. 644 107
Ram Saran Pande *v.* Janki Pande, 18 All. 106 ... ... 169, 257
Ram Saran Singh *v.* Birju Singh, 19 All. 172. 1318
Ramsing *v.* Kisansing, 19 Bom, 116 ... 1109
Ramu Rai *v.* Dayal Singh, 16 All. 390 ... 409
Ramzan Kunjra *v.* Ramkhelawan Chowbe, 24 Calc. 316 50
Ranbir Singh *v.* Drigpal, 16 All. 23 ... 746
Ranchoddas Vithaldas *v.* Rawal Nathubhai Kesabhai, 21 Bom. 110 1211
Ranchod Morar *v.* Bezanji Edulji, 20 Bom. 86. 60, 933
Ranchod Morar *v.* Bhikabhai Devidas, 21 Bom. 704 ... ... 848, 1046
Ranchordas Nathubhai *v.* Bhagubhai Parmanandas, 18 Bom. 394 135
Rangammal *v.* Venkatachari, 18 Mad. 378 ... 445
Rangammal *v.* Venkatachari, 20 Mad. 323. 445, 510
Ranganayakulu *v.* Prendergast, 17 Mad. 37... 772
Ranga Pai *v.* Baba, 20 Mad. 398 275, 682
Ranga Rau *v.* Bhavayammi, 17 Mad. 473, 378, 1224
Rangasami Chetti *v.* Periasami Mudali, 17 Mad. 58 ... ... 78, 421
Rangasami Naickan *v.* Varadappa Naickan, 17 Mad. 462 1123
Rangasami Naidu *v.* Virasami Chetti, 18 Mad. 477 407
Rangayya Appa Rau *v.* Kameswara Rau, 20 Mad. 367 1044
Rangayya Appa Rau *v.* Narasimha Appa Rau, 19 Mad. 416 ... 671
Rangayya Appa Rau *v.* Ratnam, 20 Mad. 392. 1100
Rangayya Chetti *v.* Thanikachalla Mudali, 19 Mad. 74 ... ... *495*, 567
Rangayya Chettiar *v.* Parthasarathi Naickar, 20 Mad. 120 ... ... 336, 867
Rangubai *v.* Abaji, 19 Bom. 399... ... 33
Rani *v.* Ajudhia Prasad, 16 All 315 ... 1281
Ranmalsingji *v.* Vadilal Vakhatchand, 20 Bom. 61 ... ... 457, 689
Raru Kutti *v.* Mamad, 18 Mad. 480 ... 1109
Rash Behari Das *v.* Balgopal Singh, 21 Calc. 92 595
Rash Dhary Gope *v.* Khakon Singh, 24 Calc. 433 1303
Rasul Jehan Begum *v.* Ram Surun Singh, 22 Calc. 589 ... ... 495, 1303
Ratnagiri Pillai *v.* Vava Ravuthan, 19 Mad. 477 873
Rattanji *v.* Hari Har Dat Dube, 17 All. 243... 44
Rattan Koer *v.* Chotay Narain Sing, 21 Calc. 476 54
Rayachand Mayachand *v.* Rahimbhai, 18 Bom. 347 1242
Reference by the Collector and Superintendent of Stamps, Bombay, 20 Bom. 210 1227

Col.

Reference from the Board of Revenue, N.-W. P. and Oude, 16 All. 132 ... 1227
Reference under Court-Fees Act, s. 5, 16 All. 401 276
Reference under Court-Fees Act, s. 5, 16 All. 493 1294
Reference under Court-Fees Act, s. 5, 17 All. 238 278
Reference under Stamp Act, s. 46, 19 All. 293 1226
Reference under Stamp Act, s. 46, 20 Bom. 432 1225
Reference under Stamp Act, s. 46, 23 Calc. 283 1225
Reference under Stamp Act, s. 46, 17 Mad. 280 1224
Reference under Stamp Act, s. 46, 18 Mad. 233 1226
Reference under Stamp Act, s. 46, 18 Mad. 235 1224
Reference under Stamp Act, s. 46, 20 Mad. 27 1225
Reference under Stamp Act, s. 49, 17 All. 55. 1222
Reference under Stamp Act, s. 49, 17 All. 211 1222
Rehamut Dowlah *v.* Monohur Das, 22 Calc. 921 760
Rehamut Dowlah *v.* Monohur Das, 24 Calc. 244 760
Rikhi Ram *v.* Sheo Parshan Ram, 18 All. 316 ... ... 580, 850
Rivett-Carnac *v.* Goculdas Sobhanmull, 20 Bom. 15 ... ... 606, 687
Rodrigues, In re, 20 Bom. 502 783
Roghoonath Misser *v.* Gobindnarain, 22 Calc. 451 604
Roghu Singh *v.* Misri Singh, 21 Calc. 825 ... 41
Rohan *v.* Jwala Prasad, 16 All. 333 ... 266
Rohni Singh *v.* Hodding, 21 Calc. 340 ... 1103
Romanath Bural *v.* Guggodonandan Sen, 22 Calc. 889 1239
Romesh Chunder Mukerji *v.* Rajani Kant Mukerji, 21 Calc. 1 1321
Roop Narain Singh *v.* Udwant Singh, 22 Calc. 25 1251
Roulet *v.* Fetterle, 18 Bom. 717 222
Rowlandson *v.* Champion, 17 Mad. 21 ... 563
Rozario *v.* Ingles, 18 Bom. 468 ... 806, 1332
Rudra Narain Guria *v.* Pachu Maity, 23 Calc. 437 750
Rudra Singh, In the Matter of the Petition of, 18 All. 380 1334
Runchod Khushal, In the Matter of, 21 Bom. 572 1282
Russick Lall Pal *v.* Romanath Sen, 21 Calc 792 1281
Russoobai *v.* Zulekhabai, 19 Bom. 707 ... 490
Rustam Singh *v.* Moti Singh, 18 All. 474 ... 472

Sabba Rao *v.* Palaniandi Pillai, 17 Mad. 167 1206
Sabhajit *v.* Srigopal, 17 All. 222... 170, 1077, 1249
Sabhapat Singh *v.* Abdul Gaffur, 24 Calc. 107 614
Sabir *v.* Queen-Empress, 22 Calc. 276 ... 1291
Sachitananda Mohapatra *v.* Baloram Gosain, 24 Calc. 644 911
Sadashiv Abaji Bhat *v.* Vyankatrao Ramrao Shinde, 20 Bom. 296 850
Sadashiv Ganpatrao *v.* Vithaldar Nanchand, 20 Bom. 198 ... ... 407, 963
Sadasook Gambir Chand *v.* Kannayya, 19 Mad. 96 ... ..., 1200

Col.

Sadho Saran *v.* Hawal Pande, 19 All. 98 407, 408
Sadhu Sahu *v.* Raja Ram, 16 All. 40 ... 993
Safiur Rahman *v.* Maharamunnessa Bibi, 24 Calc. 832 1218
Sagajirao Khanderav *v.* Smith, 20 Bom. 736 38, 675, 1296
Sahdeo Pandey *v.* Ghasiram Gyawal, 21 Calc. 89 414
Sajedur Raja Chowdhuri *v.* Gour Mohun Das Baishnav, 24 Calc. 418 ... 723, 1125
Sajid Ali *v.* Ibad Ali, 23 Calc. 1; L. R. 22 I. A. 171 ... ... 707, 1323
Sajjad Ahmad Khan *v.* Kadri Begam, 18 All. 1 798
Sakhalchand Rikhawdas *v.* Velchand Gujar, 18 Bom. 203 412
Sakharam Mulshet Mhadik *v.* Vishram, 19 Bom. 207 732
Sala Mahomed Jafferbhai *v.* Janbai, 22 Bom. 17; L. R. 24 I. A. 148 1324
Salima Bibi *v.* Muhammad, 18 All. 131 ... 869
Samar Dasadh *v.* Juggul Kishore Singh, 23 Calc. 366 396
Samia Pillai *v.* Chockalinga Chettiar, 17 Mad. 76 ... ... 411, 753
Samibai *v.* Premji Pragji, 20 Bom. 304 ... 229
Saminadha Pillai *v.* Thangathanni, 19 Mad. 70 494
Saminatha Ayyan *v.* Mangalathammal, 20 Mad. 29 1197
Samsar Khan *v.* Lochin Dass, 23 Calc. 854... 648
Sangili Veera Pandia Chinna Tambiar *v.* Sundaram Ayyar, 20 Mad. 279 ... 769
Sangu Ayyar *v.* Cumarasami Mudaliar, 18 Mad. 61 1307
Sankaralingam Chetti *v.* Subban Chetti, 17 Mad. 479 476
Sankara Murti Mudaliar *v.* Chidambara ... Nadan, 17 Mad. 143 1127
Sankaran *v.* Parvathi, 19 Mad. 145 828, 1093
Sankaran *v.* Raman Kutti, 20 Mad. 152 ... 665
Sankaran Narayanan *v.* Ananthanarayanayyan, 20 Mad. 375 911
Sankara Subbayyar *v.* Ramasami Ayyangar, 20 Mad. 454 1131
Sankunni Nayar *v.* Narayanan Nambudri, 17 Mad. 282 87
Santappayya *v.* Rangappayya, 18 Mad. 397. 379, 466
Sanwal Dass *v* Bismillah Begam, 19 All. 480 167
Sarafali Tyabali *v.* Subraya Bateraya, 20 Bom. 439 649
Saral Chand Mitter *v.* Mohun Bibi, 25 Calc. 371 833
Saraswati Dassi *v.* Administrator-General of Bengal, 23 Calc. 580 ... 426, 664
Sarat Chandra Purkayestha *v.* Prokash Chundra Dass Chowdhury, 24 Calc. 751 927
Sarat Chandra Singh, In the Matter of the Petition of, 18 All. 285 923
Sardarmal Jagonath *v.* Aranvayal Sabhapathy, 21 Bom. 205 ... 562, 568, 1239
Sarju Prasad *v.* Haidar Khan, 18 All. 463 .. 40
Sarkum Abu Torab Abdul Waheb *v.* Rahaman Buksh, 24 Calc. 83 ... 720, 797, 1090
Sarman Lal *v.* Khuban, 16 All. 476 ... 1110
Sarman Lal *v.* Khuban, 17 All. 422 ... 1111
Sasi Bhushun Raha *v.* Tara Lal Singh Deo, 22 Calc. 494 645
Sassoon, In the Goods of, 21 Bom. 673 ... 278

Col.

Sassoon *v.* Hurry Das Bhukut, 24 Calc. 455 1201, 1202
Sasti Churn Nundi *v.* Annopurna, 23 Calc. 699 87
Satappa Pillai *v.* Raman Chetti, 17 Mad. 1 616, 658
Satcowri Ghosh Mondal *v.* Secretary of State for India, 22 Calc. 252 ... 384, 434
Satish Chandra Panday *v.* Rajendra Narain Bagchi, 22 Calc. 898 980
Sathianama Bharati *v.* Saravanabaji Ammal, 18 Mad. 266 ... ... 483, 681, 777
Sattappa Chetti *v.* Jogi Soorappa, 17 Mad. 67 411
Saturjit Pertap Bahadoor Sahi *v.* Dulhin Gulab Koer, 24 Calc. 469 ... 33, 67
Satyendra Nath Thakur *v.* Nilkantha Singha, 21 Calc. 383 1142
Satyesh Chunder Sircar *v.* Dhunput Singh, 24 Calc. 20 ... ... 392, 1047
Savalaram *v.* Genu, 18 Bom. 387 ... 723
Sayad Muhammad *v* Fatteh Muhammad. 22 Calc. 324; L. R. 22 I. A. 4 797, 967
Secretary of State for India *v.* Baikunt Nath Prodhan, 21 Calc. 38 100
Secretary of State for India *v.* Dip Chand Poddar, 24 Calc. 306 1029
Secretary of State for India *v.* Kajimuddy, 23 Calc. 257 ... ... 101, 1099
Secretary of State for India *v.* Kota Bapanamma Garu, 19 Mad. 165 ... 743, 900
Secretary of State for India *v.* Mahadei, 19 All. 127 621
Secretary of State for India *v.* Nitye Singh, 21 Calc. 38 100
Secretary of State for India *v.* Ram Taruck Das, 21 Calc. 38 100
Secretary of State for India *v.* Vakhatsangji Meghrajji, 19 Bom. 668 ... 1132, 1283
Secretary of State for India *v.* Vydia Pillai, 17 Mad. 193 ... ... 768, 952
Seeni Chettiar *v.* Santhanathan Chettiar, 20 Mad. 58 1044
Seeta Patta Mahadevi *v.* Suryudamma, 18 Mad. 128 270
Seetaramayya *v.* Venkatarazu, 18 Mad. 420 488, 773
Seetharama Raju *v.* Bayanna Pantulu, 17 Mad. 275 ... ... 10, 1039
Seshagiri Rau *v.* Rama Rau, 19 Mad. 448 ... 607
Seshamma *v.* Chennappa, 20 Mad. 467 960, 1215, 1325
Seshamma *v.* Subbarayadu, 18 Mad. 403 ... 508
Seshammal *v.* Munusami Mudali, 20 Mad. 358 1202
Sesham Patter *v.* Moss, 17 Mad. 445 1027
Seth Shapurji Nana Bhai *v.* Shankar Dat Dube, 17 All. 431 168, 423
Sewnarain Mohata, In the Goods of, 21 Calc. 911 661
Shama *v.* Lechhu Shekh, 23 Calc. 300 ... 787
Shama Charan Chakravarti *v.* Katu Mandal, 24 Calc. 344 1034
Shama Charan Das *v.* Kasi Naik, 23 Calc. 971 942
Sham Chand *v.* Bahadur Upadhia, 18 All. 430 717
Sham Chand Giri *v.* Bhayaram Panday, 22 Calc. 92 1122

Col.

Sham Chand Pal *v.* Protap Chunder Pal, 25 Calc. 78; L. R. 24 I. A. 186 ... 894
Sham Charan Mal *v.* Chowdhry Debya Singh Pahraj, 21 Calc. 872 ... 712, 832, 1048
Sham Lal *v.* Chokhe, 19 All. 68 ... 880
Sham Lal *v.* Chokhe, 19 All. 464 ... 880
Sham Lall Mitra *v.* Amarendro Nath Bose, 23 Calc. 460 ... ... 85, 708, 730
Sham Lal Pal *v.* Modhu Sudan Sircar, 22 Calc. 558 ... ... 59, 423
Shangunni Menon *v.* Veerappan Pillai, 18 Mad. 407 655
Shankar Dat Dube *v.* Harman, 17 All. 245 ... 39
Shankar Dial *v.* Muhammad Mujtaba Khan, 18 All. 400 604
Shankar Dial *v.* Venables, 19 All. 121 ... 1179
Shankar Lal *v.* Dalip Singh, 17 All. 33 ... 1117
Shankar Prasad *v.* Jalpa Prasad, 16 All. 371 758
Shankar Raghunath *v.* Vithal Babaji, 21 Bom. 45 563
Shanmuga Pillai *v.* Ramanathan Chetti, 17 Mad. 309 415
Shantappa Chedambaraya *v.* Sabrao Ramchandra Yellapur, 18 Bom. 175 1152, 1225
Shapurji Nanabhai *v.* Shankar Dut Dube, 17 All. 431 ... ... 168, 423
Sheobarat Kuari *v.* Bhagwati Prasad, 17 All. 523 ... ... 488, 489, 520
Sheo Charan Lal *v.* Sheo Sewak Singh, 18 All. 469 ... ... 76, 1170
Sheo Charan Singh *v.* Lalji Mal, 18 All. 371 759
Sheo Narain Rai *v.* Parmeshar Rai, 18 All. 270 1099
Sheo Nath Singh *v.* Ram Din Singh, 18 All. 19 1069
Sheo Prasad *v.* Lalit Kuar, 18 All. 403 ... 1302
Sheo Progash Tewari *v.* Bhoop Narain Prosad Pathak, 22 Calc. 759 ... 940
Sheoratan Kunwari *v.* Ram Pargash, 18 All. 227 371
Sheosagar Singh *v.* Sitaram Singh, 24 Calc. 616; L. R. 24 I. A. 50 1080
Sheo Shankar Gir *v.* Ram Shewak Chowdhri, 24 Calc. 77 ... 481, 708
Sheo Singh *v.* Jeoni, 19 All. 524 720
Shiamanand *v.* Har Lall, 18 All. 471 ... 842
Shib Charan Lal *v.* Raghunath, 17 All. 174 ... 1089
Shib Lal *v.* Asmatullah, 18 All. 165 ... 1282
Shib Lal *v.* Collector of Bareilly, 16 All. 423 1218
Shib Nath Chong *v.* Sarat Chunder Sarkar, 22 Calc. 586 223
Shib Singh *v.* Mukat Singh, 18 All. 437 ... 622
Shibu Haldar *v.* Gupi Sundari Dasya, 24 Calc. 449 607
Shidappa *v.* Irava, 18 Bom. 737 58
Shimbhu Nath *v.* Gayan Chand, 16 All. 379 ... ... 475, 527
Shiramulu *v.* Sobbanadri Appa Rau, 19 Mad. 21 710
Shirin Begam *v.* Agha Ali Khan, 13 All. 141 1169, 1171
Shitab Dei *v.* Debi Prasad, 16 All. 21 ... 138
Shital Mondal *v.* Prossonnamoyi Debya, 21 Calc. 986 97
Shivdayal Ramcharan *v.* Khetu Gangu, 20 Bom. 293 963
Shivlal Kalidas *v.* Jumaklal Nathiji Desai, 18 Bom. 542 ... ... 341, 412

Col.

Shridhar Ballal Kelkar *v.* Chintaman Sadashiv Mehendale, 18 Bom. 396 ... 1040
Shrimant Sagajirao Khanderao *v.* Smith, 20 Bom. 736 ... ... 38, 675, 1296
Shrinivasachariar *v.* Rangammal, 18 Mad. 94 58
Shrivram Chintaman *v.* Sarasvatibai, 20 Bom. 175 749
Sidayatunnissa *v.* Muhammad Mahmud, 19 All. 342 683
Shidheswar Teor *v.* Gyanada Dasi, 22 Calc. 291 808
Simon *v.* Mahomed Sheriff, 19 Mad. 368 ... 1017
Sindha Shri Ganpatsingji Himatsingji *v.* Abraham, 20 Bom. 755 ... 248, 252
Singa Reddi *v.* Madhava Rau, 20 Mad. 360 356
Siriparapu Ramanna *v.* Mallikarjuna Prasada Nayudu. 17 Mad. 43 ... 774, 1212
Sitab Chand Nahar *v.* Hyder Malla, 24 Calc. 281 722
Sital Hari Banerjee *v.* Heera Lall Chatterjee, 21 Calc. 269 154
Sitanath Panda *v.* Pelaram Tripati, 21 Calc. 869 1115
Sita Ram *v.* Ram Lal, 18 All. 440 ... 337
Sivakami Ammal *v.* Gopala Savundram Ayyan, 17 Mad. 131 1269
Sivamma *v.* Subbamma, 17 Mad., 477 ... 138
Sivaraman Chetti *v.* Iburam Saheb, 18 Mad. 327 435
Sivasubramania Naicker *v.* Krishnammal, 18 Mad. 287 477
Smith *v* Tribhovandas Mangaldas, 19 Bom. 401 1329
Sobhanadri Appa Rau *v.* Chalamanna, 17 Mad. 225 710
Sobhandri Appa Rau *v.* Sriramulu, 17 Mad. 221 ... ... 456, 689
Sohan Lal *v.* Hardeo Sahai, 19 All. 194 ... 420
Soiru Padmanabh Rangappa *v.* Narayanrao bin Vithalrao, 18 Bom. 520 ... 497, 987
Soman Gope *v.* Raghubir Ojha, 24 Calc. 160 700
Somasundaram Ayyar *v.* Fischer, 19 Mad. 60 86
Somasundara Mudaliar *v.* Vythilinga Mudaliar, 19 Mad. 285... ... 14, 30
Sonshet Antushet Teli *v.* Vishnu Babaji Johari, 20 Bom. 78 ... 629
Sorabji Cowasji Polishvala *v.* Buchoobai, 18 Bom. 366 ... 456, 906
Sorabji Jamsetji *v.* Ishwardas Jugjiwandas, 20 Bom. 654 ... ... 216, 217, 218
Sorimuthu Pillai *v.* Padmanabha Pillaiyan, 19 Mad. 471 931
Soshi Bhusun Guha *v.* Gogan Chunder Shaha 22 Calc 364 1141
Sreenath Banerjee *v.* East Indian Railway Co., 22 Calc. 268 1337
Srihari Banerjee *v.* Khitish Chandra Rai, 24 Calc. 569 1091
Srikishen Lal *v.* Atma Ram, 19 All. 261 ... 996
Srinath Roy *v.* Ainaddi Halder, 24 Calc. 395 886
Srinath Roy *v.* Godadhur Das, 24 Calc. 348 ... 353
Srinivasa Ayyangar *v.* Queen-Empress, 17 Mad. 105 664
Srinivasa Ayyangar *v.* Seetharamayyar, 19 Mad. 72 1158
Srinivasaragava Ayyangar *v.* Muttusami Padayachi, 20 Mad. 6 975

Col.

Srinivasa Sastrial *v.* Sami Rau, 17 Mad. 180 78, 323
Srinivasa Thathachar *v.* Rama Ayyan, 17 Mad. 247 1146
Sri Ram *v.* Kesri Mal, 18 All. 338 ... 1043
Srirangachariar *v.* Ramasami Ayyangar, 18 Mad. 189 ... ... 251, 693, 1097
Srish Chunder Singh, In the Matter of, 21 Calc. 206 456
Sristidhur Couch *v.* Kally Churn Bhuttacharjee. 21 Calc. 904 269
Stalkartt *v.* Guru Das Kundu Chowdhry, 21 Calc. 680 ... ... 98, 268
Subarni *v.* Bhagwan Khan, 19 All. 101 ... 623
Suba Singh *v.* Sarfraz Kunwar, 19 All. 215 489
Subba Ayyar *v.* Ganasa Ayyar, 18 Mad. 179 517
Subbammal *v.* Huddleston, 17 Mad. 273 ... 1096
Subbanna *v.* Munekka, 18 Mad. 457 ... 136
Subbaramayyar *v.* Nigamaduliah Saheb, 18 Mad. 342 734
Subbarau Nayudu *v.* Yagana Pantulu, 19 Mad. 90 685
Subbarau *v.* Devu Shetti, 18 Mad. 126 ... 253
Subbaraya Chetti *v.* Sadasiva Chetti, 20 Mad. 490 ... ... 514, 1083, 1123
Subbaraya Mudali *v.* Manika Mudali, 19 Mad. 345 ... ... 513, 1074
Subbaraya Pillai *v.* Vaithilingam, 20 Mad. 91 319
Subbarayar *v.* Asirvatha Upadesayyar, 20 Mad. 494 779
Subbarayudu *v.* Adinarayudu, 18 Mad. 134... 930
Subba Sastri *v.* Balachandra Sastri, 18 Mad. 421 1068
Subbayya *v.* Saminadayyar, 18 Mad. 496 35, 44, 187
Subha Bibi *v.* Hara Lal Das. 21 Calc. 519 ... 87
Subhudra *v.* Basdeo Dube, 18 All. 29 ... 809
Subramania Ayyar *v.* Sitha Lakshmi, 20 Mad. 147 450
Subramaniam *v.* Perumal Reddi, 18 Mad. 454 1046
Subramanian Chetti *v.* Periavenkan Udaya Tevar, 20 Mad. 239 690
Subramanian Chetti *v.* Rakku Servai, 20 Mad. 232 137
Subramanya Chettyar *v.* Padmanabha Chettyar, 19 Mad. 267 516
Subramanya Pandya Chokka Talavar *v.* Siva Subramanya Pillai, 17 Mad. 316 491, 678, 834
Succaram Morarji Shetay *v.* Kalidas Kalianji, 18 Bom. 631 501
Sudhama Upadhya *v.* Queen-Empress, 23 Calc. 328 784
Suja Hossein *v.* Monohur Das, 22 Calc. 921... 760
Suja Hossein *v.* Monohur Das, 24 Calc. 244... 760
Sujaudin *v.* Madhavdas, 18 Bom. 693 617, 1130
Sukru *v.* Tafazzul Husain Khan, 16 All. 398 645
Sukurullah Kazi *v.* Bama Sundari Dasi, 24 Calc. 404 636
Suleman Kadr *v.* Mehdi Begum Surreya Bahu, 21 Calc. 135 ; L. R. 20 I. A. 144 ... 791
Sultan Nawaz Jung *v.* Rustomji Nanabhoy, 20 Bom. 704 ... ... 557, 1000, 1043
Sumbhu Nath Santra Mahapatra *v.* Surjamoni Dei, L. R. 24 I. A. 191 ; 25 Calc. 187 1009
Summers, In the Matter of, 23 Calc. 592 560, 692
Sundara Gopalan *v.* Venkata Varada Ayyangar, 17 Mad. 228 1172

Col.

Sundararaja Ayyangar *v.* Pattanathusami Tevar, 17 Mad. 306 964
Sundar Malhar Patel *v.* Bapuji Shridhar, 18 Bom. 755 859
Sundar Singh *v.* Ghasi, 18 All. 410 206, 1125
Sundrammal *v.* Rangasami Mudaliar, 18 Mad. 193 ... ... 487, 734
Surat City Municipality *v.* Ochhavaram Jamnadas, 21 Bom. 630 112
Surat Lall Mondal *v.* Umar Haji, 22 Calc. 877 701
Surb Narain Singh *v.* Birj Mohun Thakur, 23 Calc. 80 977
Surendra Narain Singh *v.* Bhai Lal Thakur, 22 Calc. 752 ... ... 959, 1279
Suresh Chunder Maitra *v.* Kristo Rangini Dasi, 21 Calc. 249 1207
Surja Kanta Acharjee *v.* Baneswar Shaha, 24 Calc. 251 ... ... 385, 896
Surjan Raot *v.* Bhikari Raot, 21 Calc. 213 ... 67
Surjoo Das *v.* Balmakund Das, 23 Calc. 252 1251
Surno Moyee Debi *v.* Dakina Ranjan Sanyal, 24 Calc. 291 1172
Surrut Coomari Dassee *v.* Radha Mohun Roy, 22 Calc. 784 1201
Suryanarayana *v.* Narendra Thatraz, 19 Mad. 255 ... ... 208, 252
Swamirao *v.* Padapa bin Bhujangrav, 18 Bom. 22 1187

Tahir Ally *v.* Koorsoomboo, 22 Calc. 270 ... 988
Tai *v.* Ladu, 20 Bom. 801 ... 696, 728
Tajjo Bibi *v.* Bhagwan Prasad, 16 All. 295 ... 860
Tanudin *v.* Pandu, 18 Bom. 699 ... 917, 1128
Tapeshri Lal *v.* Deokinandan Lal, 16 All. 1 208
Tapesri Lal *v.* Deokinandan Lal, 19 All. 22 ... 1155
Tapiram *v.* Sadu, 21 Bom. 570 957
Taqui Jan *v.* Obaidulla *alias* Nanhe Nawab, 21 Calc. 866 833
Tara Chand *v.* Imdad Husain, 18 All. 325 1099
Tarak Chunder Sen *v.* Gyanada Sundari, 23 Calc. 817 756
Tara Prosad Roy *v.* Bhobodeb Roy, 22 Calc. 931 419
Tasadduk Rasul Khan *v.* Ahmad Husain, 21 Calc. 66 ; L. R. 20 I. A. 176 ... 1171
Tejendro Narain Singh *v.* Bakai Singh, 22 Calc. 658 ... ... 255, 265
Tejpur Dewchand *v.* Mahomed Jamal, 20 Bom. 596 68
Tewari Jaswant Singh *v.* Lala Sheo Narain Lal, L. R. 21 I. A. 6 ; 16 All. 157 ... 383
Thakur Din *v.* Mannu Lal, 19 All. 456 ... 621
Thakuri *v.* Bramha Narain, 19 All. 60 ... 1296
Thakuri *v.* Kundan, 17 All. 280... ... 1264
Thakur Prasad *v.* Fakirullah, 17 All. 106 ; L. R. 22 I. A. 44 410
Thakur Raghunathji Maharaj *v.* Shah Lal Chand, 19 All. 330 ... 956, 959
Thapita Peter *v.* Thapita Lakshmi, 17 Mad. 235 860
Thayammal *v.* Annamali Mudali, 19 Mad. 35 522
Thayar Ammal *v.* Lakshmi Ammal, 18 Mad. 381 ... ... 579, 713
Thillai Chetti *v.* Ramanatha Ayyan, 20 Mad. 295 864
Thirukumaresan Chetti *v.* Subbaraya Chetti, 20 Mad. 313 331

Col.

Tholappala Charlu *v.* Venkata Charlu, 19 Mad. 62 616
Thomas *v.* Thomas, 23 Calc. 913 ... 361
Thompson *v.* Calcutta Tramways Company, 21 Calc. 523 52
Thurai Rajah *v.* Jainilabdeen Rowthan, 18 Mad. 484 ... ... 679, 744
Tilak Chandra Sarkar *v.* Baisagomoff, 23 Calc. 502 597
Tilakdhari Rai *v.* Soghra Bibi, 18 All. 302 ... 40
Tiluck Singh *v.* Parsotein Proshad, 22 Calc. 924 746
Timmanna Banta *v.* Mahabala Bhatta, 19 Mad. 167 ... ... 45, 1169
Timmappa Kuppayya *v.* Rama Venkanna Naik, 21 Bom. 311 ... 646, 653
Tincouri Debya *v.* Shib Chandra Pal Chowdhury, 21 Calc. 639 ... 414, 1165, 1170
Tirthasami *v.* Annappayya, 18 Mad. 131 408, 1084
Tirthasami *v.* Seshagiri Pai, 17 Mad. 299 ... 683
Tirumalaswami Ayyangar *v.* Tirumalai Goundan, 19 Mad. 324 ... 983
Tirumalayappa Pillai *v.* Swami Naikar, 18 Mad. 469 84
Tirupati Raju *v.* Vissam Raju, 20 Mad. 155 874, 1195
Todar Mal *v.* Said Muhammad, 17 All. 277 1333
Tokhan Singh *v.* Udwant Singh, 22 Calc. 25 1251
Torap Ali *v.* Queen-Empress, 22 Calc. 638 942
Tribhovandas Jekishandas *v.* Krishnaram Kuberam, 18 Bom. 283 850
Tribhovandas Mangladas *v.* Yorke-Smith, 20 Bom. 316 500
Tribhovandas Mangaldas *v.* Yorke-Smith, 21 Bom. 249 500
Tribhuvan Das Ruttonji *v.* Ganga Das Tricumji, 18 Bom. 7 542
Trikamlal Jamnadas *v.* Kalidas Dalpatram, 21 Bom. 628 245
Trikam Madhav Shet *v* Hirji Harjivan Shet, 18 Bom. 332 1050
Trimbak Gopal Rahalkar *v.* Secretary of State for India, 21 Bom. 684 ... 619
Trimbaklal Govandas *v.* Hiralal Itchhalal, 20 Bom. 659 765
Trimbak Ramkrishna Ranade *v.* Lakshman Ramkrishna Ranade, 20 Bom. 495 370, 480, 515
Trimbak Ramrao Deshpande *v.* Govinda, 19 Bom. 328 167
Troyluckho Nath Mozumdar *v.* Pahar Khan, 23 Calc. 641 1020
Tukaram *v.* Babaji, 21 Bom. 122 ... 178
Tukaram *v.* Khandu, 20 Bom 541 ... 408
Tuljaram *v.* Bamanji Kharsedji, 19 Bom. 828 ... ... 662, 820, 1259
Tullockchand Harnath *v.* Goculbhoy Mulchand, 21 Bom. 724 1055
Tulsi Bewah *v.* Sweeney, 24 Calc. 881 ... 1002
Tulsi Pershad Bhakt *v.* Benayek Misser, 23 Calc. 918 ; L. R. 23 I. A. 102 ... 53
Tulsi Prasad *v.* Matru Mal, 18 All. 210 40, 878
Turmuklal Harkisanrai *v.* Kalyandas Khushal, 19 Bom. 127 1165
Turner *v.* Pestonji Fardunji, 20 Bom. 403 ... 561

Col.

Udai Chunder Chuckerbutty *v.* Ashutosh Das Mozumdar, 21 Calc. 190 ... 474
Udayana Pillai *v.* Senthivelu Pillai, 19 Mad. 411 742
Ujagar Lal *v.* Jia Lal, 18 All. 382 ... 997
Umamba Boyi Saiba *v.* Dipamba Boyi Saiba, 19 Mad. 120 ; L. R. 23 I. A. 28 ... 1032
Umardaraz Ali Khan *v.* Wilayat Ali Khan, 19 All. 169 ... ... 718 799
Uma Sundari Devi *v.* Bindu Bashini Chowdhrani, 24 Calc. 759 47
Umbica Churn Sen *v.* Bengal Spinning and Weaving Co., 22 Calc. 105 573
Umed Hathising *v.* Goman Bhaiji, 20 Bom. 385 ... ... 169, 417, 504
Umrao Begum *v.* Irshad Husain, 21 Calc. 997; L. R. 21 I. A. 163 ... 903, 1008
Umrao Chand *v.* Bindraban Chand, 17 All. 475 667
Uncovenanted Service Bank *v.* Abdul Bari, 18 All. 461 88
Unhamma Devi *v.* Vaikunta Hegde, 17 Mad. 218 649
Universal Life Assurance Society and Sterndale, In the Matter of an Agreement between, 23 Calc. 320 576
Unni *v.* Nagammal, 18 Mad. 368 ... 858
Upadhya Thakur *v.* Persidh Singh, 23 Calc. 723 ... ... 1243, 1300
Upendra Bhatta *v.* Ranganatha Bhatta, 17 Mad. 399 167
Upendra Mohan Ghose *v.* Gopal Chandra Ghose, 21 Calc. 484 52
Upendra Nath Bhuttacharjee *v.* Khitish Chandra Bhuttacharjee, 23 Calc. 499. 627, 887
Uppalakandi Kunhi Kutti Ali Haji *v.* Kunnam Mithal Kottaprath Abdul Rahiman, 19 Mad. 288 1043
Uthunganakath Avuthala *v.* Thazhatharayil Kunhali, 20 Mad. 435 656

Vaidkhan Roshan Khan, Sarguro *v.* Sakhya, 20 Bom. 729 629
Vaithyanatham *v.* Gangarazu, 17 Mad. 9 250
Vallabha Valiya Raja *v.* Vedapuratti, 19 Mad. 40 860
Vani *v.* Bani, 20 Bom. 553 1042
Varadarajulu Naidu *v.* Srinivasulu Naidu, 20 Mad. 333 445
Vasudevan *v.* Sankaran, 20 Mad. 129 ... 812
Vasudeva Upadyaya *v.* Visvaraja Tirthasami, 19 Mad. 331 172
Vasudeva Upadyarya *v.* Visvaraja Thirthasami, 20 Mad. 407 665
Vasudev Bhikaji Joshi *v.* Bhau Lakshman Ravut, 21 Bom. 528 848
Vasudev Morbhat Kale *v.* Krishnaji Ballal Gokhale, 20 Bom. 534 ... 471, 834
Vasudev Venkatesh Pai *v.* Mhasti, 21 Bom. 808 ... ... 175, 502
Veeramma *v.* Abbiah, 18 Mad. 99 679, 1053
Velu Goundan *v.* Kumaravelu Goundan, 20 Mad. 289 1294
Velji Hirji *v.* Bharmal Shripal, 21 Bom. 287 ... ... 206, 237
Velu Pandaram *v.* Gnanasambanda Pandara Sannadhi, 19 Mad. 243 742
Velu Pillai *v.* Ghose Mahomed, 17 Mad. 293 707

Col.

Venganayyan *v.* Ramasami Ayyan, 19 Mad. 422 ... ... 665, 1068
Venilal *v.* Parjaram, 20 Bom. 173 ... 490
Venkaji Babaji Naik *v.* Shidramapa Balapa Desai, 19 Bom. 663 ... 691, 1042
Venkaji Krishna Nadkarni *v.* Lakshman Devji Kandar, 20 Bom. 354 650
Venkaji Shridhar *v.* Vishnu Babaji Beri, 18 Bom. 534 527
Venkatachella Chetti *v.* Venkatasubba Rau, 17 Mad. 496 248
Venkata Kumara Mahipati Surya Rau *v.* Chellayammi Garu, 17 Mad. 150 ... 453
Venkatalingam *v.* Veerasami, 17 Mad. 89 ... 725
Venkatanarasimha Naidu *v.* Dandamudi Kotayya, 20 Mad. 299 644
Venkatanarasimha Naidu *v.* Papammah, 19 Mad. 54 1085
Venkata Narasimha Naidu *v.* Ramasami, 18 Mad. 216 777
Venkatanarasimha Naidu *v.* Suranna, 17 Mad. 298 1244
Venkatanarasimhulu *v.* Peramma, 18 Mad. 173 709
Venkatappa Nayanim *v.* Thimma Nayanim, 18 Mad. 410 ... ... 34, 229
Venkatarama Doss *v.* Maharajah of Vizianagram, 19 Mad. 103 note ... 722, 1209
Venkataramakrishna Rau *v.* Bhujanga Rau, 19 Mad. 107 — 522
Venkataramayya *v.* Venkatalakshmamma, 20 Mad. 493 728
Venkata Reddi *v.* Taylor, 17 Mad. 100 664, 767
Venkata Subbaraya Chetti *v.* Zamindar of Karvetinagar, 20 Mad. 159 1172
Venkata Subbu *v.* Appusundram, 17 Mad. 92 691
Venkata Suriya Mahipati Ram Krishna Rao *v.* Court of Wards, 20 Mad. 395 ; L. R. 24 I. A. 194 1006
Venkatesa Tawker *v.* Ramasami Chettiar, 18 Mad. 338 ... ... 556, 960
Venkatesh Narasinha *v.* Govindrao, 21 Bom. 55 461
Venkayya *v.* Ragavacharlu, 20 Mad. 448 ... 752
Venkiti Nayak *v.* Murugappa Chetti, 20 Mad. 48 686
Venkatramayya *v.* Krishnayya, 20 Mad. 319 674
Venkatrayer *v.* Jamboo Ayyan, 17 Mad. 377 359
Vidyanatha Ayyar *v.* Chinnasami Naik, 17 Mad. 108 135
Vijendra Tirtha Swami *v.* Sudhindra Tirtha Swami, 19 Mad. 197 933
Vinayak Janardhan *v.* Mainai, 19 Bom. 138 650
Vinayakrao Gopal Deshmukh *v.* Vinayak Krishna Dhebri, 21 Bom 331 ... 756
Vinayak Vishwanath Bhople *v.* Balu, 20 Bom. 491 818
Virasangappa Shetti *v.* Rudrappa Shetti, 19 Mad. 110 523
Viravara Thodhramal Rajya Lakshmi Devi *v.* Viravara Throdhramal Surya Narayana Dhatrazu, 20 Mad. 256 ; L. R. 24 I. A. 118 514
Virbaiji *v.* Wadia Mills Co., 18 Bom. 65 ... 990
Virchand Lalchand *v.* Kumaji, 18 Bom. 48 721, 1310

	Col.
Virupakshappa *v.* Nilgangava, 19 Bom. 309	455
Vishnu *v.* Rango Ganesh, 18 Bom. 382 ...	365
Vishnu Ganesh Joshi *v.* Yeshvantrao, 21 Bom. 387 ... ... 1045.	1197
Vishnu Mahadev Sonar *v.* Dagadu, 19 Bom. 290	1281
Vishnu Ramchandra *v.* Ganesh Appaji Chaudhari, 21 Bom. 325 ... 721, 1066,	1215
Vishwambhar Pandit. In re. 20 Bom. 699 ...	52
Vithalbowa *v.* Narayan Daji Thite, 18 Bom. 507	737
Vithoba *v.* Esat. 18 Bom. 594	1173
Vithuldas Gober *v.* Bombay and Persia Steam Navigation Co., 19 Bom. 639 ...	108
Vizianagram Maharajah *v.* Sitaramarazu. 19 Mad. 100 722,	1188
Volkart *v.* Sabju Saheb, 19 Mad. 304 ...	1199
Volkart Brothers *v.* Rutnavelu Chetti, 18 Mad. 63	244
Vora Isaballi *v.* Daudbhai Masabhai, 14 Bom. 371	988
Vundravandas Purshotamdas *v.* Cursondas Govindji, 21 Bom. 646 ... 532,	730
Vyankatesh Chunaji Joshi *v.* Sakharam Daji, 21 Bom. 465	1079
Vythilinga Pandara Sannadhi *v.* Somasundara Mudaliar, 17 Mad. 199... ...	479
Wafadar Khan *v.* Queen-Empress, 21 Calc. 955 ... ... 49, 143,	144
Wajid Ali Shah *v.* Nawal Kishore, 17 All. 213	1106
Wall *v.* Howard, 17 All. 438	666
Wall *v.* Howard, 18 All. 156	220
Wall *v.* Howard, 18 All. 215	31
Wamanrao Damodar *v.* Rustomji Edalji, 21 Bom. 701	325
Watkins *v.* Fox, 22 Calc. 943	707
Watson & Co. *v.* Ram Chand Dutt, 23 Calc. 799	717
Watson & Co. *v.* Sreekristo Bhumick, 21 Calc. 132 30,	97
Wazir *v.* Dhuman Khan, 16 All. 65 ...	860
Wazir Khan *v.* Kale Khan, 16 All. 126 ...	41
Wazir Singh *v.* Kishori Rawanji, 19 All. 522.	1109
Wilayat Ali Khan *v.* Umardaraz Ali Khan, 19 All. 165	62
Wilson *v.* MacAfee, 19 All. 131	36
Wilson *v.* Macauliffe, 18 All. 53... ...	218
Wilson *v.* Madras Municipality, 19 Mad. 83.	772
Woomesh Chunder Biswas *v.* Rashmohini Dassi, 21 Calc. 279	1322
Yadao Babaji Suryarao *v.* Ambo, 21 Bom. 567 855,	1216
Yaminuddowlah *v.* Ahmed Ali Khan, 21 Calc. 561	989
Yaramati Krishnayya *v.* Chundru Papayya, 20 Mad. 326	444
Yarlagadda Mallikarjuna *v.* Makerla Sridevamma, 20 Mad. 162 ; L. R. 24 I. A. 73	136
Yaro *v.* Sanaullah, 19 All. 259	558
Yashvant Narayan Kamat *v.* Vithal Divakar Parulekar, 21 Bom 267 . 850,	1062
Yasin Khan *v.* Muhammad Yar Khan, 19 All. 504	792
Yellappa *v.* Ramchandra. 21 Bom. 463 ...	1162
Yellawa *v.* Bhimangavda, 18 Bom. 452 ...	331
Yeshwadabai *v.* Ramchandra Tukaram, 18 Bom. 66 586,	653
Yesu *v.* Sitaram, 21 Bom. 733	460
Yonosuke Mitsue *v.* Ookerda Khetsy. 21 Bom. 779	272
Young *v.* Young, 23 Calc. 916 note ...	361
Yule & Co. *v.* Mahomed Hossain, 24 Calc. 124 246,	314
Yule & Co. *v.* Mahomed Hossain. 24 Calc. 129.	1202
Yusuf Beg *v.* Board of Foreign Missions of the Presbyterian Church of New York in America, 16 All. 420	957
Zemindar of Vallur and Gudur *v.* Adinarayudu, 19 Mad. 445	873

A DIGEST

OF

THE HIGH COURT REPORTS,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA.

1894—1897.

ABANDONMENT OF CHILDREN.

—*Penal Code* (*Act XLV of* 1860), *s.* 317—*Exposure of child—Facts constituting the offence defined—Child left in charge of a blind woman and deserted.*] A woman who was the mother of an illegitimate child aged at the time about six months, left the child in charge of a blind woman in whose company she was, saying that she was going to get food and would return shortly. She went away to another village and did not return. Apparently she never intended to return. Upon these facts it was *held* by BLAIR and AIKMAN, JJ. (*dissentiente* KNOX, J.) that the mother of the child could not properly be convicted of the offence defined by s. 317 of the Penal Code. QUEEN-EMPRESS *v.* MIRCHIA.

[18 All. 364

ABATEMENT OF APPEAL.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[19 Bom. 714

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[21 Bom. 102

See REVISION—CRIMINAL CASES—QUESTIONS OF FACT.

[19 Bom. 714

ABATEMENT OF RENT.

——, Agreement for.

See EVIDENCE — PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[24 Calc. 20

See REGISTRATION ACT, S. 18.

[24 Calc. 20

ABATEMENT OF RENT—*concluded.*

—*Decree apportioning rent, reserved in a mokurari lease, to the land transferred—Lessee getting possession of less land than stated in lease—Landlord and tenant—Lease—Apportionment of rent—Act XI of* 1859, *s.* 54—*Right of lessee to abatement of rent.*] A decree had determined that lands, leased in *mokurari* to a lessee, with a fixed rent thereon, were less in extent than they were specified to be in the *pottas* that comprised them, the lessors not having title to the whole; and the lessee had obtained possession of the less estate:—*Held*, that the lessee was entitled to a corresponding abatement of the rent reserved. The revenue-paying *mehal*, within which were the lands subject to the *mokurari*, such lands being shares of *mouzas* therein, was afterwards sold for arrears, under Act XI of 1859. The purchaser at that sale was sued by the *mokuraridar*, to make good her incumbrance under s. 54 of the Act. The lease was maintained by the decree that followed, but only as to part of the shares specified in the *pottas*; and the lessee obtained possession of that part only. In this suit for mesne profits brought by the lessee against the purchaser's heir, who filed a cross suit against her for rent, it was *held* that, as the lessee had not proved that she, having had possession under the leases, had been dispossessed by the purchaser, there had not been an eviction in the proper sense of the word. But when, in her suit for possession, part only was decreed to her, and she was precluded by the result from getting a substantial part, her position was the same as if she had been evicted. She, therefore, had the same equity for an apportionment, as if she had been evicted. On the facts it was rightly found by the first Court that the leases were not taken with knowledge on the part of the lessee that the title was a doubtful one. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD.

[21 Calc. 1005

[L. R. 21 I. A. 118

ABATEMENT OF SUIT.

1. Suits.
2. Appeals.

See APPEAL—DECREES.

[17 All. 172
[18 Mad. 496

See APPEAL—ORDERS.

[18 Mad. 496
[17 All. 172, 286

See RIGHT OF SUIT—SURVIVAL OF RIGHT.

[22 Calc. 92

(1) SUITS.

1.—*Suit by original mortgagor against mortgagee and sub-mortgagee—Death of mortgagee pending suit — Civil Procedure Code* (1882), *s.* 368—*Cause of action, Survival of.*] Plaintiff sued to redeem a mortgage passed by his deceased father to defendant No. 1 and joined defendant No. 2 as being the sub-mortgagee of defendant No. 1 and in possession of the property. After suit defendant No. 1 died, and no steps were taken by the plaintiff within time to make his legal representatives parties. The suit was, however, allowed to be continued against defendant No. 2, and a redemption decree was passed in plaintiff's favour:—*Held*, on second appeal, that defendant No. 2 being the sub-mortgagee and not the assignee of defendant No. 1, on the death of the latter no cause of action survived to the plaintiff against defendant No. 2, and the suit abated under s. 368 of the Civil Procedure Code (Act XIV of 1882). PADGAYA *v.* BAJI BABAJI MOHOLKAR.

[20 Bom. 549

(2) APPEALS.

2.—*Death of appellant during pendency of appeal —Only one of three legal representatives brought upon the record—Civil Procedure Code* (1882), *s.* 365 —*Representative of deceased person.*] The words "the legal representative" in s. 365 of the Code of Civil Procedure must, where there are more than one legal representative, be read in the plural. Hence where a sole appellant died during the pendency of his appeal, leaving three legal representatives, and only one of such legal representatives was brought upon the record in the place of the deceased appellant within the prescribed period of limitation:—*Held* that the appeal must abate. Either all the legal representatives of the deceased appellant should have been brought upon the record as appellants, or, if any had refused to be joined as appellants, they should have been brought on as respondents. GHAMANDI LAL *v.* AMIR BEGAM.

[16 All. 211

ABETMENT.

See ATTEMPT TO COMMIT OFFENCE.

[16 All. 409

See BANKERS.

[16 All. 88

ABETMENT—*concluded.*

See JURISDICTION OF CRIMINAL COURT —OFFENCES ONLY PARTLY COMMITTED IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

See MARRIAGE ACT, S. 68.

[20 Mad. 12

See PENAL CODE, S. 153.

[18 Bom. 758

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL.

[17 All. 498
[L. R. 22 I. A. 193

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.

[20 Mad. 8

1.—*Penal Code* (*Act XLV of* 1860), *s.* 107—*Instigation by means of letter—Place where offence may be tried—Jurisdiction of Criminal Court.*] Where one person instigates another to the commission of an offence by means of a letter sent through the post the offence of abetment by instigation is completed so soon as the contents of such letter become known to the addressee, and such offence is triable at the place where such letter is received. QUEEN-EMPRESS *v.* SHEO DIAL MAL.

[16 All. 339

2.—*Bombay Police Act* (*Bombay Act IV of* 1890), *ss.* 51 *and* 52—*Duty of a Police-officer to shelter a person in custody—Penal Code* (*Act XLV of* 1860), *s.* 330—*Using violence for the purpose of extorting a confession—Abetment of causing hurt —Illegal omission to act—Maxim "Respondeat superior."*] A policeman who stands by, acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, is guilty of abetment of an offence under s. 330 of the Penal Code. Nothing but fear of instant death is a defence for a policeman who tortures any one by order of a superior. The maxim *respondeat superior* has no application in such a case. Under the Bombay Police Act (Bombay Act IV of 1890) every Police-officer is bound to shelter a person in custody, and to arrest persons committing assaults likely to cause grievous bodily injury. If he omits to perform this duty, he is guilty of abetment. When the law imposes a duty to act on a person, his illegal omission to act renders him liable to punishment. QUEEN-EMPRESS *v.* LATIFKHAN.

[20 Bom. 394

ABKARI ACT.

See BENGAL EXCISE ACT.

See BOMBAY ABKARI ACT.

See MADRAS ABKARI ACT.

ABSCONDING OFFENDER.

1.—*Criminal Procedure Code* (1882). *ss.* 87, 88, 89 *and* 537—*Proclamation for person absconding—Attachment of his property—Irregularity in publication of proclamation.*] An accused person for whose arrest a warrant had been issued having absconded, a proclamation was issued and affixed to the Court-house on the 6th of November requiring him to appear on the 11th of December 1893, and his property was attached. The proclamation was not published at the village where the accused resided until the 15th of November. The accused surrendered on the 25th of June, 1894, and applied for restoration of the property under the Criminal Procedure Code, s. 89, and an order was made by which the restoration of his property was refused. The accused preferred a petition to the High Court for the revision of that order:—*Held*, that there was no legal proclamation under the Criminal Procedure Code, s 87, and that the order should be set aside and the attachment declared void. QUEEN-EMPRESS *v.* SUBBARAYAR.

[19 Mad. 3

2.—*Criminal Procedure Code* (1882), *s.* 88—*Attachment of property as of an absconding person—Claim to property attached—Procedure—Right of suit — Revision.*] When a claim is made to property attached under s. 88 of the Code of Criminal Procedure, the Magistrate should stay the sale to give the claimant time to establish his right. If the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition. QUEEN-EMPRESS *v.* KANDAPPA GOUNDAN.

[20 Mad. 88

ABWAB.

See CESS.

[22 Calc. 680

ACCOMPLICE.

1.—*Informer cognizant of offence—Omission to disclose commission of offence.*] Where an informer was, upon his own statement, cognizant of the commission of an offence, and omitted to disclose it for six days, the Court was not prepared to say that he was an accomplice; but *held* that his testimony was not such as to justify a conviction except where it was corroborated. ISHAN CHANDRA CHANDRA *v.* QUEEN-EMPRESS.

[21 Calc. 328

2.—*Spy—Distinction between a spy and an accomplice—Detective officer.*] The action of a spy and informer in suggesting and initiating a criminal offence is itself an offence, the act not being excused or justified by any exception in the Penal Code (Act XLV of 1860), or by the doctrine which distinguishes the spy from the accomplice. But the act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice. Distinction between a spy and an accomplice pointed out. *Rex.* v. *Despard*, 28 State Trials, 489; *Reg.* v. *Mullins*, 3 Cox. C. C. 526; *Queen-Empress* v. *Mona Puna*, I L. R. 16 Bom. 661, referred to and followed QUEEN-EMPRESS *v.* JAVECHARAM.

[19 Bom. 363

ACCOMPLICE—*concluded.*

3.—*Witnesses who have acted as accomplices.*] Where witnesses appeared to have taken an active part in carrying away a person after he had been grievously assaulted and was in a helpless condition, and then leaving him in a field where he was subsequently found dead:—*Held*, that their evidence was no better than that of accomplices; at any rate, it would be most unsafe for the Court to rely upon their evidence, unless corroborated in material respects, in convicting the accused. ALIMUDDIN *v.* QUEEN-EMPRESS.

[23 Calc. 361

ACCOUNT.

——, Balance of.

See EVIDENCE—CIVIL CASES — SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 614

See STAMP ACT, s. 34.

[18 Bom. 614

—— between Hindus.

See HINDU LAW—USURY.

[21 Calc. 840

——, Current.

See HINDU LAW—USURY.

[20 Bom. 721

——, Liability to render.

See LUNATIC.

[20 Bom. 659

——, Mode of taking.

See DECREE—FORM OF DECREE—ACCOUNT.

[20 Mad. 313

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 13.

[19 Bom. 553

——, Prayer for.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[21 Bom. 248

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—PROFITS OF LAND.

[21 Bom. 248

——, Suit for.

See DECREE—FORM OF DECREE—MORTGAGE.

[22 Calc. 100

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 15 D.

[20 Bom. 469

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[20 Bom. 15

ACCOUNT—*concluded.*

See LIMITATION ACT, s. 17.

[20 Bom. 15

See LIMITATION ACT, ART. 61.

[19 All. 244

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[21 Bom. 48

See TRUST.

[18 Bom. 551

See VALUATION OF SUIT—APPEALS.

[18 Bom. 40
[20 Bom. 265

ACCOUNTANT.

See BANKERS.

[16 All. 88

ACCOUNT BOOKS.

——, Entries in.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT-BOOKS.

[16 All. 157
[L. R. 21 I. A. 6
[18 All. 92

ACCOUNTS.

See DECREE — FORM OF DECREE — ACCOUNT.

[20 Mad. 313

See EXECUTOR.

[20 Bom. 571

See CASES UNDER MORTGAGE—ACCOUNTS.

—— against trustees.

See TRUST.

[18 Bom. 551

—— between co-sharers.

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[21 Calc. 496
[L. R. 21 I. A. 26

——, Keeping two sets of.

See BOMBAY TOLLS ACT, s. 7.

[20 Bom. 668

——, Mutual accounts.

See LIMITATION ACT, ART. 85.

[17 Mad. 293

——, Order directing.

See APPEAL—DECREES.

[23 Calc. 406

——, Suit for settlement of.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—MISCELLANEOUS SUITS.

[16 All. 28, 333

ACCRETION.

See LANDLORD AND TENANT — ACCRETION TO TENURE.

[21 Calc. 233

—Bengal Regulation (XI of 1825). s. 4, cl. 1—Alluvion—Title to land acquired by gradual accretion—Limitation.] Clause 1 of s. 4 of Regulation XI of 1825 does not depend for its operation on the capability of identification of the accreted lands. Whether the accreted lands are capable of identification or not, the clause applies where the lands have been gained by gradual accession by the recession of a river. In the case of gradual accretions the ordinary rule of acquisition by prescription does not apply, but each accretion as it occurs comes under the same title as that upon which the land to which it is made is held. DEBI BAKHSH SINGH *v.* TIRBHAWAN SINGH.

[19 All. 238

ACCUMULATION, POWER OF HINDU AS TO.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[24 Calc. 589

ACCUMULATIONS.

See HINDU LAW — JOINT FAMILY — NATURE OF AND INTEREST IN JOINT PROPERTY.

[20 Bom. 316
[21 Bom. 349

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[20 Bom. 571

ACCUSED PERSON.

——, Affidavit of.

See FALSE EVIDENCE—GENERALLY.

[19 All. 200

——, Reservation of defence by.

See WITNESS — CRIMINAL CASES — EXAMINATION OF WITNESSES.

[18 All. 380

ACCUSED PERSON, RIGHT OF.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[21 Calc. 401, 642
[24 Calc. 288

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[19 All. 502

1.—*Application by accused for copy of Police charge sheet—Police diaries—Criminal Procedure Code* (1882), *ss.* 161 *and* 172—*Revision.*] At the beginning of a trial in the Court of a Presidency Magistrate, an application was made, on behalf of the accused, for a copy of the Police charge sheet which contained the whole of the

ACCUSED PERSON, RIGHT OF— *continued.*

prosecution evidence as set forth by the Police. and extracts from, if not copies of, the Police diary. The application was rejected by the Magistrate:—*Held*, that the High Court should not on revision interfere with the order of the Magistrate. QUEEN-EMPRESS *v.* VENKATARATNAM PANTULU.

[19 Mad. 14

2.—*Right of an accused to copies of Police reports before trial—Criminal Procedure Code* (1882), *ss.* 157, 168 and 173—*Public documents—Right of accused to inspect and have copies.*] *Held* by the Full Bench (SUBRAMANIA AYYAR, J., *dissentiente*)—Reports made by a Police-officer in compliance with ss. 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person is not entitled, before trial, to have copies of such reports:—*Held* by COLLINS, C.J., and BENSON, J.—The same rule applies to reports made by a Police-officer in compliance with s. 173 of the Criminal Procedure Code:—*Held* by SHEPHARD and SUBRAMANIA AYYAR, JJ.—Reports made by a Police-officer in compliance with s. 173 of the Criminal Procedure Code are public documents within the meaning of s. 74 of the Evidence Act, and consequently an accused person, being a person interested in such documents, is entitled by virtue of s. 76 of the Evidence Act to have copies of such reports before trial. QUEEN-EMPRESS *v.* ARUMUGAM.

[20 Mad. 189

3.—*Criminal Procedure Code* (1882), *ss.* 161 and 172—*Police diaries—Right of accused or his agent to see the special diary or have copy of statement in it.*] In no case is an accused person entitled as of right to a copy of any statement recorded by a Police-officer in the special diary prepared under the authority of s. 172 of the Code of Criminal Procedure. If the special diary is used by the Court to contradict the Police-officer who made it, or by the Police-officer who made it to refresh his memory, the accused person or his agent has a right to see that portion of the diary which has been referred to for either of these purposes. that is to say, the accused person or his agent is entitled to see the particular entry which has been referred to, and so much of the diary as in the opinion of the Court is necessary in that particular matter to the full understanding of the particular entry so used, but no more. So *held* by the Full Bench, *per* EDGE, C.J., KNOX, BLAIR, and BURKITT, JJ.—A Police-officer investigating a case may lawfully reduce into writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under s. 161 of the Code of Criminal Procedure, and if he does so, his record of such statement is part of the special diary and is just as much priviieged as any other entry in the diary. *Per* BANERJI, J., and AIKMAN, J.—Statements recorded under s. 161 of the Code of Criminal Procedure by a Police-officer making an investigation were not intended by the Legislature to be entered in the special diary, and if they are so entered, do not form an integral part of the diary and are not privileged, but the accused person or his agent is entitled to see them. QUEEN-EMPRESS *v.* MANNU.

[19 All. 390

ACCUSED PERSON, RIGHT OF— *concluded.*

ACKNOWLEDGMENT.

—— of child.

See MAHOMEDAN LAW—ACKNOWLEDGMENT.

[21 Calc. 666

[L. R. 21 I. A. 56

[23 Calc. 130

—— of debt.

See CASES UNDER LIMITATION ACT, S.19—ACKNOWLEDGMENT OF DEBTS.

See STAMP ACT, S. 3, CL. 4.

[22 Calc. 757

—— of liability.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 369, 614

See STAMP ACT, S. 34.

[18 Bom. 369, 614

—— of title.

See LIMITATION ACT. S. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

[18 All. 458

ACQUIESCENCE.

See ENCROACHMENT.

[20 Bom. 298

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[18 Bom. 66

[16 All. 328

[21 Bom. 749

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.

[18 Bom. 250

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[17 Mad. 384

—Contract—Undue influence—Acquiescence by conduct—Exchange of land.] Where the owner of certain land exchanges it for certain other land, but takes a lease for one year of the former land and pays the rent thereof, and receives and retains the rents of the land he has acquired by the exchange, he shows so complete an acquiescence in the transaction that he cannot afterwards have it set aside on the ground of undue influence. SEETHARAMA RAJU *v.* BAYANNA PANTULU.

[17 Mad. 275

ACQUITTAL.

—Previous acquittal, when no bar to further trial —Single act constituting several offences—Power of Appeal Court in disposing of appeal—Retrial, Effect of order directing, in case where one act constitutes several offences,and there has been an acquittal on some charges and a conviction on others and an appeal from such conviction—" Verdict"—Criminal Procedure Code (1882), *ss.* 236, 403 *and* 423.] The word "verdict" as used in cl. (*d*) of s. 423 of the Code of Criminal Procedure, in cases where an accused person is tried for various offences arising out of a single act, or series of acts, as cotnemplated by s. 236, means the entire verdict on all the charges, and is not limited to the verdict on a particular charge upon which an accused may have been convicted and appealed against. Where an accused person is charged with and tried for various offences arising out of a single act, or series of acts, it being doubtful which of those offences the act or acts constitute, and where he has been acquitted by the verdict of a jury of some of such offences and convicted of others and appeals against such conviction, and where the Appellate Court reverses the verdict of the jury, and orders a retrial without any express limitation as to the charges upon which such retrial is to be held, such retrial must be taken to be upon all the charges as originally framed, and the acquittal by the jury on the previous trial upon some of such charges is no bar to the accused being tried on them again, as, having regard to the provisions of s. 423 of the Code of Criminal Procedure, the provisions of s. 403 in that respect cannot apply to such cases. KRISHNA DHAN MANDAL *v.* QUEEN-EMPRESS.

[22 Calc. 377

ACT, 1839—XXXII.

See INTEREST ACT.

——, 1841—XIX.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE, OR EXECUTE DECREE, WITHOUT CERTIFICATE.

[20 Bom. 437

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[21 Bom. 102

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 102

——, 1843—XIX, s. 2.

See REGISTRATION ACT, 1877, s. 50.

[18 Bom. 332

——, 1846—I, s. 7.

See PLEADER—REMUNERATION.

[21 Bom. 42

——, 1847. XX, s. 8.

See COPYRIGHT.

[19 Bom. 557

ACT, 1850—IX.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIALS.

[22 Calc. 784

——, 1856—XIII.

See POLICE ACT (XIII OF 1856).

——, 1857—XI.

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[17 All. 456
[L. R. 23 I. A. 128

——, 1857—XIII.

See OPIUM ACT, S. 9.

[24 Calc. 691

——, 1858—XXXIV.

See LUNATIC.

[18 Mad. 472

——, 1858—XXXV.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

[22 Calc. 864

See CASES UNDER LUNATIC.

——, s. 11.

See OUDE LAND REVENUE ACT, SS. 175 AND 176.

[29 Calc. 729
[L. R. 22 I. A. 90

——, 1858—XL, s. 18.

See SPECIFIC PERFORMANCE.

[22 Calc. 545

——, 1859—VIII.

See CIVIL PROCEDURE CODE, 1859.

——, 1859—X.

See WITHDRAWAL OF SUIT.

[21 Calc. 428, 514

——, s. 7.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[24 Calc. 272
[L. R. 23 I. A. 158

——, 1859—XI.

See PUBLIC DEMANDS RECOVERY ACT, S. 2.

[21 Calc. 350

See CASES UNDER SALE FOR ARREARS OF REVENUE.

——, s. 36.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.

[21 Calc. 375

ACT, 1859—XI, s. 37.

See PARTIES—PARTIES TO SUITS—PURCHASERS.

[24 Calc. 334

———, s. 54.

See ABATEMENT OF RENT.

[21 Calc. 1005
[L. R. 21 I. A. 118

———, 1859—XIII, s. 1.

See WARRANT OF ARREST.

[20 Mad. 235

——, s. 2.—*Breach of contract of service— tatute 4, Geo. IV, Cap. 34, s. 3—Autrefois convict.*] A conviction for breach of contract of service under s. 2, Act XIII of 1859, is a bar to any subsequent conviction on the same contract for a further breach for not returning to service. GRIFFITHS *v.* TEZIA DOSADH.

[21 Calc. 262

———, 1859—XIV.

ee LIMITATION ACT, 1859.

———, 1859—XXIV.

See MADRAS POLICE ACT, 1859.

———, 1860—XXVII.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[16 All. 259
[20 Mad. 162

———, 1860—XXVIII.

See MADRAS BOUNDARY MARKS ACT, 1860.

———, 1863—XX.

—*Madras Regulation VII of* 1817, *s.* 13—*Discretionary power of a temple committee to appoint new trustees when the power of management is not hereditary—Trusts Act (II of* 1882), *s.* 49—*Jurisdiction of Civil Court.*] A temple committee appointed under Act XX of 1863 may appoint new trustees when there is no hereditary trustee to add to the existing trustees, but this power, although discretionary, must be exercised reasonably and in good faith, and according to the principle, which is applicable to public trusts, embodied in s. 49 of the Indian Trusts Act. If it is not so exercised, the power may be controlled by a Civil Court of original jurisdiction. DAVUD SAIBA *v.* HUSSEIN SAIBA.

[17 Mad. 212

———, s. 5.—*Appointment of trustee to religious endowment—Jurisdiction of District Judge—Collector as Agent of Court of Wards.*] Where a hereditary trustee of a temple died, and application was made by the Collector as Agent of the Court of Wards, in whom the management of deceased's estates, during the minority of the sons of the deceased, had vested, to be appointed trustee on behalf of the said sons :—*Held*, that the case fell within s. 5 of Act XX of 1863, and that the Court (the District Judge) had jurisdiction to make the appointment. SOMASUNDARA MUDALIAR *v.* VYTHILINGA MUDALIAR.

[19 Mad. 285

———, ss. 11 and 12 and s. 3.— *uit by Manager for rent on muchalkas granted by the Committee of religious institution—Right of suit.*] Where the Committee of a religious institution governed by Act XX of 1863 obtained *muchalkas* in its own name from the tenants of land belonging to the institution instead of in the name of its Manager :—*Held*, with reference to the provisions of the Act, that this fact constituted a mere irregularity, and that a suit brought by the Manager on such *muchalkas* was maintainable. KALYANARAMAYYAR *v.* MUSTAK SHAH SAHEB.

[19 Mad. 395

———, s. 12.

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO.

[17 Mad. 143

———, s. 14.

See ENDOWMENT.

[18 All. 227

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[24 Calc. 418

1.—**s. 14.**—*Religious endowment—Applicability of the Act—Madras Regulation VII of* 1817.] In a suit, brought with the leave of the District Court under Act XX of 1863, to remove the trustees of a Hindu temple, it did not appear that the trustees were nominated by or subject to the confirmation of the Government or any public officer :—*Held*, that Act XX of 1863 was not applicable to the temple unless it was admitted or proved by evidence that the endowment was one which would have fallen under the provisions of Regulation VII of 1817. MUTHU *v.* GANGATHARA.

[17 Mad. 95

2.—**s. 14.**—*Suit to remove trustee of religious endowment though unlawfully appointed.*] Act XX of 1863 is applicable to an endowment whereby certain shops have been purchased by subscription and dedicated to the support of a mosque, and is also applicable in respect of a person in possession of the endowed property and professing to act as *mutawalli* even though he may not have been lawfully appointed. *Dhurrum ingh* v. *Kissen Singh*, I. L. R. 7 Calc. 767 ; and *heoratan Kuari* v. *Ram Pargash*, I. L. R. 18 All. 227, referred to. MUHAMMAD SIRAJ-UL-HAQ *v.* IMAM-UD-DIN.

[19 All. 104

———, s. 16.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—ACT XX OF 1863.

[19 Mad. 498

ACT, 1864—III.
See FOREIGNERS.
[18 Bom. 636
See WARRANT OF ARREST.
[18 Bom. 636
——, 1864—XI.
See MAHOMEDAN LAW—ENDOWMENT.
[18 Bom. 401
——, 1864—XVI.
See REGISTRATION ACT, S. 50.
[20 Bom. 390
——, 1864—XX.
See MINOR—BOMBAY MINORS ACT (XX OF 1864).
[19 Bom. 245
——, ss. 18 and 29.
See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.
[20 Bom. 61
——, 1865—III.
See CARRIERS ACT.
——, 1865—X.
See SUCCESSION ACT.
——, 1865—XI.
See CASES UNDER SMALL CAUSE COURT, MOFUSSIL.
——, 1865—XV.
See PARSI MARRIAGE AND DIVORCE ACT.
——, 1865—XX.
See CASES UNDER PLEADER.
——, 1866—XIII.
See OUDE REDEMPTION ACT.
——, 1866—XX.
See REGISTRATION ACT, 1866.
——, 1867—III.
See GAMBLING ACT.
——, 1867—XXV.
See PRINTING PRESSES AND NEWSPAPERS ACT.
——, 1868—I.
See GENERAL CLAUSES CONSOLIDATION ACT, 1868.
——, 1869—I.
See OUDE ESTATES ACT.
——, 1869—IV.
See DIVORCE ACT.
——. 1869—XIV.
See BOMBAY CIVIL COURTS ACT.
ACT, 1870—VII.
See COURT-FEES ACT.
——, 1870—X.
See LAND ACQUISITION ACT, 1870.
——, 1870—XXI.
See HINDU WILLS ACT.
——, 1871—I.
See CATTLE TRESPASS ACT.
——, 1871—VI.
See BENGAL CIVIL COURTS ACT, 1871.
——, 1871—XXIII.
See PENSIONS ACT, 1871.
——, 1872—I.
See EVIDENCE ACT.
——, 1872—V.
See INSOLVENT ACT, S. 5.
[21 Bom. 405
——, 1872—IX.
See CONTRACT ACT.
——, 1872—X.
See CRIMINAL PROCEDURE CODE, 1872.
——, 1872—XV.
See MARRIAGE ACT, 1872.
——, 1873—X.
See OATHS ACT.
——, 1873—XV.
See N.-W. P. AND OUDE MUNICIPALITIES ACT, 1873.
——, 1873—XIX.
See N.-W. P. LAND REVENUE ACT.
——, 1874—II.
See ADMINISTRATOR-GENERAL'S ACT.
——, 1874—III.
See MARRIED WOMEN'S PROPERTY ACT.
——, 1874—XIV.
See SCHEDULED DISTRICTS ACT.
——, 1875—IX.
See MAJORITY ACT.
——, 1875—XIII, s. 6.
See COURT-FEES ACT, S. 19 D.
[23 Calc. 980
——, 1875—XVII.
See BURMA CIVIL COURTS ACT, 1875.
——, 1876—X.
See BOMBAY REVENUE JURISDICTION ACT.

ACT, 1876—XVII.
See OUDE LAND REVENUE ACT.

——, **1876—XVIII.**
See OUDE LAWS ACT.

——, **1877—I.**
See SPECIFIC RELIEF ACT.

——, **1877—III.**
See REGISTRATION ACT.

——, **1877—X.**
See CIVIL PROCEDURE CODE, 1877.

——, **1877—XV.**
See LIMITATION ACT.

——, **1878—I.**
See OPIUM ACT, 1878.

——, **1878—VI.**
See TREASURE TROVE.
[19 Bom. 668

——, **1878—VII.**
See FOREST ACT, 1878.

——, **1878—XI.**
See ARMS ACT.

——, **1879—I.**
See STAMP ACT, 1879.

——, **1879—IV.**
See RAILWAYS ACT, 1879.

——, **1879—XIII.**
See OUDE CIVIL COURTS ACT.

——, **1879—XVII.**
See DEKHAN AGRICULTURISTS RELIEF ACT.

——, **1881—V.**
See PROBATE AND ADMINISTRATION ACT.

——, **1881—XII.**
See N.-W. P. RENT ACT (XII OF 1881).

——, **1881—XXVI.**
See NEGOTIABLE INSTRUMENTS ACT.

——, **1882—II.**
See TRUSTS ACT.

——, **1882—IV.**
See TRANSFER OF PROPERTY ACT.

——, **1882—V.**
See EASEMENTS ACT.

——, **1882—VI.**
See COMPANIES ACT.

——, **1882—X.**
See CRIMINAL PROCEDURE CODE, 1882.

ACT, 1882—XII.
See SALT ACT.

——, **1882—XIV.**
See CIVIL PROCEDURE CODE, 1882.

——, **1882—XV.**
See PRESIDENCY TOWNS SMALL CAUSE COURTS ACT.

——, **1882—XXII, s. 9.**
See DEKHAN AGRICULTURISTS RELIEF ACT, S. 22.
[18 Bom. 739

——, **1883—XV.**
See N.-W. P. AND OUDE MUNICIPALITIES ACT, 1883.

——, **1885—VIII.**
See BENGAL TENANCY ACT.

——, **1887—I.**
See GENERAL CLAUSES CONSOLIDATION ACT, 1887.

——, **1887—VII.**
See SUITS VALUATION ACT.

——, **1887—IX.**
See PROVINCIAL SMALL CAUSE COURTS ACT.

——, **1887—XII.**
See BENGAL, N.-W. P. AND ASSAM CIVIL COURTS ACT.

——, **1888—V.**
See INVENTIONS AND DESIGNS ACT.

——, **1888—VII.**
See CIVIL PROCEDURE CODE AMENDMENT ACT (VII OF 1888).

——, **1888—X.**
See CIVIL PROCEDURE CODE AMENDMENT ACT (X OF 1888).

——, **1888—XII, s. 3.**
See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT, 1888.
[18 Bom. 184

——, **1889—IV.**
See MERCHANDISE MARKS ACT.

——, **1889—VI, s. 14.**
See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT.
[23 Calc. 446

——, **1889—VII.**
See SUCCESSION CERTIFICATE ACT.

——, **1889—X.**
See PORTS ACT.

ACT, 1889—XI.

See BURMA COURTS ACT, 1889.

——, 1890—VIII.

See GUARDIANS AND WARDS ACT.

——, 1890—IX.

See RAILWAYS ACT, 1890.

——, 1890—XI.

See PREVENTION OF CRUELTY TO ANIMALS ACT.

——, 1890—XX.

See N.-W. P. AND OUDH ACT, 1890.

——, 1891—VIII.

See EASEMENT.

[18 Bom. 616

——, 1891—XIV.

See OUDH COURTS ACT, 1891.

——, 1892—VI.

See CIVIL PROCEDURE CODE AMENDMENT ACT, 1892.

——, 1894—I.

See LAND ACQUISITION ACT, 1894.

——, 1894—V.

See CIVIL PROCEDURE CODE AMENDMENT ACT, 1894.

——, 1894—VIII.

See TARIFF ACT, 1894.

——, 1895—I.

See PRESIDENCY TOWNS SMALL CAUSE COURTS ACT (I OF 1895).

ACT CREATING NEW RIGHTS.

See EXECUTION OF DECREE—EFFECT OF CHANGE IN LAW PENDING EXECUTION.

[21 Calc. 940
[22 Calc. 767

ACTIONABLE CLAIM.

See CASES UNDER TRANSFER OF PROPERTY ACT, S. 135.

ADJOURNMENT OF CASE, GROUNDS FOR.

See CRIMINAL PROCEEDINGS.

[19 Mad. 375

ADMINISTRATION.

See LETTERS OF ADMINISTRATION.

——, Effect of.

See COMPANY — RIGHTS OF SHAREHOLDERS.

[19 Bom. 1
[L. R. 21 I. A. 139

ADMINISTRATION—*concluded.*

——, Suit for.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[24 Calc. 473

See LIMITATION ACT, ART. 122.

[24 Calc. 473

See MAHOMEDAN LAW—DEBTS.

[21 Calc. 311

See PARTIES—PARTIES TO SUITS—EXECUTORS.

[19 Bom. 83

See RECEIVER.

[19 Bom. 83

See RIGHT OF SUIT—INTESTACY.

[18 Bom. 337

——, Suit in nature of suit for.

See SECURITY FOR COSTS—SUITS.

[21 Calc. 832

ADMINISTRATOR.

See LAND REGISTRATION ACT, S. 42.

[22 Calc. 454

——, Appointment of, under Bombay Regulation VIII of 1827.

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[21 Bom. 102

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 102

——, Power of.

See LETTERS OF ADMINISTRATION.

[23 Calc. 579

——, Right of.

See INSOLVENCY—AFTER ACQUIRED PROPERTY.

[18 Mad. 24

ADMINISTRATOR-GENERAL.

——, Office of.

See ADMINISTRATOR-GENERAL'S ACT, S. 31.

[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

See STATUTES, CONSTRUCTION OF.

[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

ADMINISTRATOR-GENERAL—*concld.*

——, Rights of.

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

[22 Calc. 1011
[L. R. 22 I. A. 203

ADMINISTRATOR-GENERAL'S ACT (II OF 1874).

See STATUTES, CONSTRUCTION OF.

[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

——, s. 18.

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[21 Bom. 102

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 102

——, s. 31.

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

[22 Calc. 1011
[L. R. 22 I. A. 203

1.—s. 31.—*Transfer to Administrator-General by Hindu executor—Hindu Wills Act (XXI of 1870), s. 5—Succession Act (X of 1865), ss. 179, 187 and 191—Probate and Administration Act (V of 1881).*] *N L M*, a Hindu, died on the 22nd February 1891, leaving property in Calcutta and leaving a will, dated 5th August 1889. The executors appointed by the will took out probate on the 17th March, 1891, and on the 14th August, 1893, executed a deed, by which they purported, under s. 31 of the Administrator General's Act (II of 1874), to transfer all estates, effects and interests vested in them to the Administrator-General of Bengal:—*Held* by PRINSEP and TREVELYAN, JJ., affirming the decision of SALE, J. (PETHERAM, C.J., dissenting) that the transfer was not a valid one. The executor of a Hindu testator has no power to transfer the property of the testator to the Administrator-General under the terms of s. 31 of Act II of 1874. That section applies only to the executors and administrators of persons of the class mentioned in s. 16 of the Act, that is to say, persons not being Hindus, Mahomedans or Buddhists. *Per* PETHERAM, C.J., *contra*—The transfer was a valid one. Even if s. 5 of the Hindu Wills Act (XXI of 1870) were sufficient to prevent such transfer to the Administrator-General under s. 30 of the Administrator-General's Act of 1867, which is by no means certain, a Hindu executor has power, if not since the passing of the Hindu Wills Act, at any rate since the coming into force of the Probate and Administration Act (V of 1881), to transfer his interest and estate under a will to the Administrator-General, as constituted under Act II of 1874. The course of legislation with reference to the creation of the office of the Administrator-General, and to his duties and powers reviewed and considered in construing Act II of 1874. ADMINISTRATOR-GENERAL OF BENGAL *v.* PREM LALL MULLICK.

[21 Calc. 732

Held (on appeal) by the Privy Council, that the right of executors to devolve the property of their testator, with all powers and duties relating to its administration, upon the Administrator-General, conferred by s. 31 of Act II of 1874, is not confined to any particular class of executors or of estates. The right is given to any executor in whom estate of the deceased has been vested by virtue of the probate upon the one condition that the Administrator-General shall consent. It is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things which existed at a prior time when it first became law; the object being that the statutory law, bearing on the subject, should be collected and made applicable to the existing circumstances; nor can a positive enactment be annulled by indications of intention, at a prior time, gathered from previous legislation on the matter. Executors having obtained probate of the will, and possession of the estate, of a Hindu testator, executed a deed, purporting to be in terms of s. 31, Act II of 1874, transferring the property, vested in them by the probate, to the Administrator-General:—*Held*, reversing the judgment of a majority of the Appellate Court, and affirming that of the Chief Justice, that this transfer was valid under that section. ADMINISTRATOR-GENERAL OF BENGAL *v.* PREMLAL MULLICK.

[22 Calc. 788
[L. R. 22 I. A. 107

2.—s. 31.—*Transfer by executors to Administrator-General.*] Where the executors of a will transfer their interest in the estate of the deceased under s. 31 of the Administrator-General's Act to the Administrator-General:—*Held*, such a transfer would only transfer such powers of disposition over the estate as the executors themselves possessed. IN THE GOODS OF NUNDO LALL MULLICK.

[23 Calc. 908

——, s. 56.

See EXECUTOR.

[22 Calc. 14

ADMIRALTY COURT.

See PRACTICE—CIVIL CASES—ADMIRALTY COURT.

[22 Calc. 511

ADMISSION.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE — UNSTAMPED AND UNREGISTERED DOCUMENTS.
[18 Bom. 369, 614
[23 Calc. 851

See EVIDENCE ACT, SS. 17 AND 18.
[17 Mad. 134

See INSOLVENCY—ASSIGNMENTS BY DEBTOR.
[19 All. 76
[L. R. 23 I. A. 106

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.
[18 All. 384

See MINOR—REPRESENTATION OF MINOR IN SUITS.
[24 Calc. 853
[L. R. 24 I. A. 107

See PLEADER—AUTHORITY TO BIND CLIENT.
[18 Mad. 73

See STAMP ACT, 1879, S. 34.
[18 Bom. 369, 614

See VARIANCE BETWEEN PLEADING AND PROOF.
[18 Mad. 462

ADOPTION.

See HINDU LAW—ADOPTION.
See HINDU LAW—WILL—CONSTRUCTION OF WILLS.
[20 Bom. 718

See MALABAR LAW—ADOPTION.

——, Acknowledgment of.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[19 Bom. 374

——, Effect of.

See LIMITATION ACT, ART. 141.
[21 Bom. 376

—— made with criminal intention.

See HINDU LAW—CUSTOM—ADOPTION.
[19 Mad. 127

——, Suit alleging invalidity of.

See LIMITATION ACT, ART. 118.
[17 All. 167
[20 Mad. 40

See LIMITATION ACT, ART. 140.
[21 Bom. 159

——, Suit to set aside.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[18 Mad. 53

ADOPTION—*concluded*.

See LIMITATION ACT, ART. 92.
[24 Calc. 1
[L. R. 23 I. A. 97

See LIMITATION ACT, ART. 141.
[21 Bom. 376

——, Suit to uphold.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[18 Mad. 145

ADULTERY.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.
[17 Mad. 260

——, Intent to commit.

See CRIMINAL TRESPASS.
[19 All. 74

——, Proof of.

See DIVORCE ACT, S. 7.
[22 Calc. 544

ADVERSE POSSESSION.

See CASES UNDER LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

See POSSESSION—ADVERSE POSSESSION.

ADVOCATE.

See COUNSEL.

——, Admission by.

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.
[18 All. 384

ADVOCATE-GENERAL.

See TRUST.
[18 Bom. 551

AFFIDAVIT.

See PRACTICE—CRIMINAL CASES—AFFIDAVIT.
[19 Mad. 209

——, Contents of.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.
[19 Bom. 88

—— of convicted person applying for revision.

See FALSE EVIDENCE—GENERALLY.
[19 All. 200

AFFIDAVIT OF DOCUMENTS.

See INSPECTION OF DOCUMENTS.
[22 Calc. 105, 891
[19 Bom. 350

AFFRAY.

See PENAL CODE, S. 159.
[17 All. 166

See RIOTING.
[21 Calc. 392

AGE.

——, **False representations as to.**
See MINOR—LIABILITY ON CONTRACTS.
[24 Calc. 265

——, **Proof of.**
See EVIDENCE ACT, S. 32.
[24 Calc. 265

AGENCY RULES.

See GUARDIANS AND WARDS ACT, 1890, S. 1.
[18 Mad. 227

AGENT.

See BANKERS.
[16 All. 88

See BROKER.
[20 Bom. 124

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.
[20 Bom. 61
[17 Mad. 221
[18 Mad. 456

See PRINCIPAL AND AGENT.

——, **Authority of.**
See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.
[24 Calc. 469

See BENGAL TENANCY ACT, S. 56.
[24 Calc. 169

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.
[17 All. 198
[L. R. 22 I. A. 31

——, **Discretion of.**
See PRINCIPAL AND AGENT—COMMISSION AGENTS.
[20 Mad. 97

——, **Purchase by.**
See BENAMI TRANSACTION—CERTIFIED PURCHASERS.
[17 Mad. 282

——, **Sale of goods by.**
See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.
[20 Bom. 633

——, **Suit by.**
See PLAINT—VERIFICATION AND SIGNATURE.
[16 All. 420

AGENT OF COURT OF WARDS, SUIT AGAINST.

See OUDE LAND REVENUE ACT, SS. 175 AND 176.
[22 Calc. 729
[L. R. 22 I. A. 90

AGENT OF MANAGER OF RAILWAY.

See RAILWAYS ACT, S. 77.
[24 Calc. 306

AGREEMENT.

See CASES UNDER CONTRACT AND CONTRACT ACT.

See CASES UNDER RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

—— **between Government and Government Solicitor.**
See COSTS—TAXATION OF COSTS.
[17 Mad. 162

——, **Illegal.**
See CASES UNDER CONTRACT ACT, S. 23.
See HEREDITARY OFFICES ACT, S. 7.
[18 Bom. 752

—— **not to execute decree.**
See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.
[21 Calc. 437

—— **not to oppose final discharge.**
See DEBTOR AND CREDITOR
[20 Bom. 636

—— **not to work for rival tradesman.**
See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.
[18 Bom. 702
[19 Bom. 764

—— **to give time to debtor.**
See CIVIL PROCEDURE CODE, S. 257A.
[18 All. 435

—— **to indemnify, contained in lease.**
See REGISTRATION ACT, S. 49.
[18 Bom. 745

—— **to lease.**
See STAMP ACT, SCH. I, ART. 4.
[17 Mad. 280

—— **to pay revenue.**
See LANDLORD AND TENANT—LIABILITY FOR RENT.
[19 Bom. 528

—— **to postpone redemption.**
See MORTGAGE — REDEMPTION — REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.
[20 Bom. 346

"AGRICULTURAL YEAR."

See DEED—CONSTRUCTION.

[18 All. 388

"AGRICULTURIST," DEFINITION OF.

See DEKHAN AGRICULTURISTS ACT, S. 2.

[19 Bom. 255

ALIEN, PERIOD OF MINORITY FOR.

See LETTERS OF ADMINISTRATION.

[21 Calc. 911

ALIENATION.

See CASES UNDER HINDU LAW—ALIENATION.

——, Direction against.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[24 Calc. 406

ALIMONY.

See DIVORCE ACT, S. 36.

[23 Calc. 913

[18 All. 238

See HUSBAND AND WIFE.

[21 Bom. 77

AMEEN.

——, Power and functions of in measuring land.

See PENAL CODE, S. 186.

[22 Calc. 286

——, Report made by.

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[17 All. 436

"ANIMAL."

See PREVENTION OF CRUELTY TO ANIMALS ACT.

[24 Calc. 881

ANNUITY.

——, Execution of decree contingent on non-payment of.

See LIMITATION ACT, ART. 178.

[16 All. 237

APPEAL. *Col.*

1. Acts 30
2. Arbitration 31
3. Bengal Acts 33
4. Bombay Acts 33
5. Certificate of Administration ... 33
6. Decrees 34
7. Default in Appearance 38
8. Execution of Decree 38
   (*a*) Questions in Execution ... 38
   (*b*) Parties to Suits 39
9. N.-W. P. Acts 40
10. Orders 41
11. Probate 45
12. Objections by Respondent ... 46
13. Dismissal of Appeal 46

APPEAL—*continued.*

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 27

See BOMBAY REVENUE JURISDICTION ACT, S. 11.

[20 Bom. 803

See DIVORCE ACT, S. 55.

[20 Bom. 362

See HIGH COURT, JURISDICTION OF—HIGH COURT, N.-W. P.—CIVIL.

[18 All. 375

See KHOTI SETTLEMENT ACT, S. 17.

[21 Bom. 244

See LAND ACQUISITION ACT, 1870, S. 39.

[17 All. 573

See LAND ACQUISITION ACT, 1894, S. 54.

[23 Calc. 526

See CASES UNDER LETTERS PATENT, HIGH COURT, CL. 15.

See CASES UNDER LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

See CASES UNDER PAUPER SUIT—APPEALS.

See CASES UNDER PRACTICE — CIVIL CASES—APPEAL.

See PUBLIC DEMANDS RECOVERY ACT, S. 2.

[23 Calc. 641

See CASES UNDER REMAND—CASES OF APPEAL AFTER REMAND.

See CASES UNDER SPECIAL OR SECOND APPEAL.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[18 All. 119

See CASES UNDER VALUATION OF SUIT—APPEALS.

——, Abatement of.

See ABATEMENT OF SUIT—APPEALS.

[16 All. 211

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[21 Bom. 102

See PARTIES—SUBSTITUTION OF PARTIES—GENERALLY.

[16 All. 211

——, Delay in filing.

See LIMITATION ACT, S. 5.

[18 Bom. 84

[20 Bom. 736

——, Dismissal of, for default.

See LETTERS PATENT, HIGH COURT, CL. 15.

[23 Calc. 339

APPEAL—*continued.*

See LIMITATION ACT, ART. 168.

[23 Calc. 339

See REVIEW—POWER TO REVIEW.

[23 Calc. 339
[24 Calc. 350

——, **Effect of.**

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[18 All. 455

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT.

[18 All. 223

—— **from order in insolvency matter.**

See DISTRICT JUDGE, JURISDICTION OF.

[17 Mad. 377

——, **Grounds of.**

See CASES UNDER SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL.

——, **Memorandum of.**

See COURT-FEES ACT, SCH. II, ART. 11.

[17 All. 238

See PRACTICE—CIVIL CASES—APPEAL.

[16 All. 77

See VALUATION OF SUIT—APPEALS.

[23 Calc. 723

——, **Omission to, from appealable order, Effect of.**

See RES JUDICATA—RELIEF NOT GRANTED.

[24 Calc. 546

See RIGHT OF SUIT—FRAUD.

[24 Calc. 546

——, **Presentation of.**

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[19 Mad. 354
[20 Mad. 87

See LIMITATION ACT, S. 5.

[21 Bom. 552

See LIMITATION ACT, S. 12.

[19 All. 342

——, **Reversal of decree on.**

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.

[21 Calc. 989

See MONEY PAID UNDER DECREE.

[17 Mad. 82

——, **Restoration of.**

See PRIVY COUNCIL, PRACTICE OF—RESTORATION OF APPEAL.

[21 Bom. 723
[L. R. 24 I. A. 128

APPEAL—*continued.*

——, **Revivor of.**

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL.

[21 Calc. 997
[L. R. 21 I. A. 163

——, **Right of.**

See BOMBAY REVENUE JURISDICTION ACT.

[20 Bom. 803

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 Mad. 343
[L. R. 21 I. A. 71

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[16 All. 390

See PAUPER SUIT—APPEALS.

[18 Bom. 454

See PRACTICE—CIVIL CASES—APPEAL.

[18 Bom. 520

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 454

——, **Withdrawal of.**

See PAUPER SUIT—APPEALS.

[18 Bom. 464

(1) ACTS.

1.—*Act XX of* 1863, *s.* 5—*Order appointing trustee of religious endowment—Civil Procedure Code, s.* 622—*Superintendence of High Court.*] No appeal lies to the High Court from the order of a District Judge under s. 5 of Act XX of 1863 appointing a trustee of a religious endowment. *Minakshi* v. *Subramanya*, I. L. R. 11 Mad. 26, followed; *Sultan Ackeni Sahib* v. *Bava Malimiyar*, I. L. R. 4 Mad. 295, dissented from. The High Court therefore can revise such an order under s. 622 of the Civil Procedure Code. SAMASUNDARA MUDALIAR *v.* VYTHILINGA MUDALIAR.

[19 Mad. 285

2.—*Bengal Tenancy Act, s.* 153—*Suit for arrears of rent—Dâk cess when considered as rent—Appeal where subject-matter under value of Rs.* 100.] Where *dâk* cess is claimed under the contract by which the rent is payable, it must be regarded as rent, *i.e.*, as part of what is lawfully payable in money for use and occupation of the land held by the tenant, and where there is a dispute with regard to such *dâk* cess, the amount of rent is in dispute, and an appeal lies though the amount in dispute is less than Rs. 100, and notwithstanding the provisions of s. 153 of the Bengal Tenancy Act. WATSON & Co. *v.* SREEKRISTO BHUMICK.

[21 Calc. 132

APPEAL—*continued.*

(1) ACTS—*concluded.*

3.—*Companies Act (VI of* 1882), *s.* 162, *Order under—Notice of appeal—Companies Act, s.* 214—*Limitation Act (XV of* 1877), *s.* 12.] *Held,* that no appeal lay from an order made under s. 162 of Act VI of 1882, by a Court under the supervision of which proceedings in liquidation were being conducted, declining to continue an investigation commenced by it under that section:—*Held* also that, whether or not the service of notice of appeal within three weeks provided for by s. 214 of Act VI of 1882 implies that all the formalities prescribed for the presentation and admission of an appeal by the Court of Civil Procedure must first be gone through before notice of appeal can be served, a person appealing under the said section cannot avail himself of the provisions of s. 12 of the Limitation Act. WALL *v.* HOWARD.

[18 All. 215

4.—*Guardians and Wards Act (VIII of* 1890), *ss.* 47 (*g*) *and* 48—*Order refusing to remove a guardian.*] The effect of ss. 47 (*g*) and 48 of the Guardians and Wards Act (VIII of 1890) is to allow no appeal from an order refusing to remove a guardian. IN RE BAI HARKHA.

[20 Bom. 667

5.—*Guardians and Wards Act (VIII of* 1890), *s.* 47, *cls.* (*f*) *and* (*g*)—*Removal of guardian—Order refusing to remove a guardian.*] Upon an application for cancelling a certificate of guardianship of the person and property of a minor, the District Judge ordered the certificate to be amended only as regards the guardianship of the person by appointing the applicant as such guardian, and ordering a monthly allowance to be paid to her for the education and maintenance of the minor. The applicant appealed to the High Court:—*Held,* that the order appealed from was one refusing to remove a guardian, and as such was not appealable under cls. (*f*) and (*g*) of s 47 of the Guardians and Wards Act (VIII of 1890). *Mohima Chunder Biswas* v. *Tarini Sunkur Ghose,* I. L. R. 19 Calc. 487, followed. PAKHWANTI DAI *v.* INDRA NARAIN SINGH.

[23 Calc. 201

(2) ARBITRATION.

6.—*Civil Procedure Code* (1882), *ss.* 525 *and* 526—*Arbitration without intervention of Court—Application for decree in terms of award—Denial of submission to arbitration and genuineness of award.*] An appeal lies against a decree passed upon an award under Civil Procedure Code, ss. 525 and 526, when the cause shown against the filing of the award has denied the submission to arbitration and the genuineness of the award. HUSANANNA *v.* LINGANNA.

[18 Mad. 423

7.—*Civil Procedure Code* (1882), *s.* 522—*Grounds of appeal from a decree passed upon a judgment in accordance with an award.*] *Held* that an appeal would not lie from a decree passed upon a judgment given according to an award merely because there might have been some irregularities in the procedure of the arbitrator, such alleged irregularities having been considered by the Court which passed the decree, and having been found by that Court not to be of such a nature as to render the award no award in law. *Jagan Nath* v. *Mannu Lal,* I. L. R. 16 All. 231; *Bindesuri Pershad Singh* v. *Jankee Pershad Singh,* I. L. R. 16 Calc. 482; and *Lachman Das* v. *Brijpal,* I. L. R. 6 All. 174, referred to. RAM DHAN SINGH *v.* KARAN SINGH.

[18 All. 414

8.—*Civil Procedure Code* (1882), *ss.* 521 *and* 522—*Award—Decree on judgment in accordance with an award.*] Where a decree has been made upon a judgment given upon an award and is not in excess of, and is in accordance with, the award, an appeal from such decree will lie on the ground that the so-called award upon which the judgment and decree are based is from one cause or another no award in law. Where an application to set aside an award on the ground of the misconduct of an arbitrator has been made under s. 521 of the Code of Civil Procedure, and such application has been refused after judicial determination, and a decree made under s. 522 of the Code, which is in accordance with and not in excess of the award, no appeal based upon any similar ground will lie from the decree so made. But an appeal will lie in the case last mentioned where, an application to set aside the award on the ground of misconduct of the arbitrator having been made, the Court has passed its decree without considering such application, or where the Court has not allowed sufficient time to the parties to file objections to the award. *Bhagirath* v. *Ramghulam,* I. L. R. 4 All. 283, approved. *Joymungul Singh Bahadoor* v. *Mohun Ram Marwaree,* 23 W. R. 429; *Nandram Daluram* v. *Nemchand Jadavchand,* I. L. R. 17 Bom. 357; and *Lachman Das* v. *Brijpal,* I. L. R. 6 All. 174; referred to. IBRAHIM ALI *v.* MOHSIN ALI.

[18 All. 422

9.—*Decree in accordance with award with slight modification—Illegal award—Civil Procedure Code* (1882), *s.* 522.] In a suit which was defended by an agent (*am-mokhtar*) on behalf of the defendant, the agent applied for a reference to arbitration although he had no power to do so under the *am-mokhtarnamah.* After the submission of the award, objection was made on behalf of the defendant that the agent had no authority to apply for or consent to the reference. The objection was overruled by the Court, and a decree made in accordance with the award with one slight modification in the defendant's favour:—*Held,* in answer to an objection that no appeal lay under s. 522 of the Civil Procedure Code, except in so far as the decree was in excess of or not in accordance with the award, that an appeal

APPEAL—*continued.*

(2) ARBITRATION—*concluded.*

would lie if the award was shown to be illegal and void *ab initio*. *Nandram Daluram* v. *Nemchand Jadavchand*, I. L. R. 17 Bom. 357, followed. SATURJIT PERTAP BAHADOOR SAHI *v.* DULHIN GULAB KOER.

[24 Calc. 469

(3) BENGAL ACTS.

10.—*Chota Nagpur Landlord and Tenant Procedure Act* (*Bengal Act I of* 1879), *ss.* 37. *cl.* (4), 39, 137 *and* 139—*Rent, Suit for—Appeal in cases where the aggregate amount claimed is above Rs.* 100.] An appeal lies to the Judicial Commissioner and not to the Deputy Commissioner from a decree passed by the Deputy Collector, in a suit for rent, where the aggregate amount of rent claimed under s. 39, Bengal Act I of 1879, is above Rs. 100. PRIAG NATH SAH DEO *v.* MURA MUNDA.

[24 Calc. 249

(4) BOMBAY ACTS.

11.—*Bombay Municipal Act* (*Bombay Act III of* 1888), *ss.* 298, 299 *and* 301—*Order of Chief Judge of Small Cause Court granting compensation for land—Act XII of* 1888. *s.* 3.] An appeal lies to the High Court from a decision of the Chief Judge of the Small Cause Court of Bombay, granting compensation to the owner of land taken by the Municipality in case of a set back under the Municipal Act, III of 1888, ss. 298, 299 and 301. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v.* ABDUL HUQ.

[18 Bom. 184

(5) CERTIFICATE OF ADMINISTRATION.

12.—*Succession Certificate Act* (*VII of* 1889), *ss.* 19 *and* 28—*Bombay Regulation VIII of* 1827—*Order refusing certificate of heirship—Practice.*] An appeal lies from the order of a District Judge refusing to grant a certificate of heirship under Regulation VIII of 1827 by virtue of the provisions of s. 28 of the Succession Certificate Act (VII of 1889). JAVERMAL *v.* NAZIR OF THE DISTRICT COURT OF POONA.

[18 Bom. 748

13.—*Succession Certificate Act* (*VII of* 1889), *ss.* 19 *and* 28—*Order refusing certificate of heirship—Bombay Regulation VIII of* 1827.] An appeal lies from an order refusing to grant a certificate of heirship under Regulation VIII of 1827, by virtue of s. 19 of the Succession Certificate Act (VII of 1889). RANGUBAI *v.* ABAJI.

[19 Bom. 399

14.—*Order granting certificate on the applicant's furnishing security—Succession Certificate Act* (*VII of* 1889), *ss.* 9 *and* 19.] The widow of a deceased person having applied for a certificate under the Succession Certificate Act (VII of 1889), the Judge ordered the certificate to issue on the applicant's furnishing security under s. 9 of the Act:—*Held* that such an order was not an

APPEAL—*continued.*

(5) CERTIFICATE OF ADMINISTRATION—*concluded.*

order "granting, refusing or revoking a certificate" within the meaning of s. 19 of the Act, and was, therefore, not appealable. *Bhagwani* v. *Manni Lal*, I. L. R. 13 All. 214, followed. BAI DEVKORE *v.* LALCHAND JIVANDAS.

[19 Bom. 790

15.—*Succession Certificate Act* (*VII of* 1889), *ss.* 6 *and* 19—*Order for security on grant of certificate.*] Where a minor petitioner represented by the Court of Wards applied for a succession certificate under Act VII of 1889, and the District Court granted the certificate, but ordered security to be given by the Court of Wards:—*Held*, that no appeal lay from the order requiring security. RAMA REDDI *v.* PAPI REDDI.

[19 Mad. 199

(6) DECREES.

16.—*Provisional decree—Suit for partition—Form of decree—Civil Procedure Code* (1882), *ss.* 2, 215, 215A *and* 540.] In a suit for partition of family property a decree was passed declaring the share to which the plaintiff and some of the defendants were entitled in the family property, but reserving all other questions involved in the suit:—*Held*, that the decree was a provisional decree and was subject to appeal, but that it was irregular in form in that it should have contained declarations as to all the rights and liabilities which had been adjudicated on, and directions as to the accounts and inquiries remaining to be taken and made. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR.

[18 Mad. 73

17.—*Decree on compromise extending beyond scope of suit—Civil Procedure Code* (1882), *s.* 375.] In a suit for the partition of a zemindari the parties effected a compromise in writing which provided, *inter alia*, for certain reliefs which could only have been given by the Court in a suit based upon a different cause of action. The compromise was presented in Court, and a decree was passed embodying the whole of its terms:—*Held*, that an appeal lay against the decree. A decree under s. 375 of the Civil Procedure Code is only final so far as it relates to so much of the subject-matter of the suit as is dealt with in the compromise. VENKATAPPA NAYANIM *v.* THIMMA NAYANIM.

[18 Mad. 410

18.—*Order allowing withdrawal of suit—Civil Procedure Code* (1882), *s.* 373.] An order under s. 373 of the Code of Civil Procedure allowing a plaintiff to withdraw his suit with leave to bring another suit on the same cause of action is not appealable, being neither one of the orders specified in s. 588, nor a decree within the meaning of s. 2, of the said Code. *Kalian Singh* v. *Lekhraj Singh*, I. L. R. 6 All. 211; and *Jogodindro Nath*

APPEAL—*continued.*

(6) DECREES—*continued.*

v. *Sarut Sunduri Debi*, I. L. R. 18 Calc. 322, followed. *Ganga Ram* v. *Data Ram*, I. L. R. 8 All. 82, dissented from. JAGDESH CHAUDHRI *v.* TULSHI CHAUDHRI.

[16 All. 19

GENDA MAL *v.* PIRBHU LAL.

[17 All. 97

19.—*Order refusing to certify adjustment of decree out of Court—Civil Procedure Code* (1882), *ss.* 2, 244 *and* 258.] An appeal will lie from an order under s. 258 of the Code of Civil Procedure, refusing an application to record an adjustment of a decree made out of Court. Such an order is one determining a question in execution of a decree within s. 244, and is therefore a decree within the meaning of s. 2 of the Code. *Lingayya* v. *Narasimha*, I. L. R. 14 Mad. 99; and *Rangji* v. *Bhaiji Harjivan*, I. L. R. 11 Bom. 57, cited. JAMNA PRASAD *v.* MATHURA PRASAD.

[16 All. 129

20.—*Order refusing to certify—Payment to decree-holder out of Court—Civil Procedure Code* (1882), *ss.* 244 *and* 258.] An order under s. 258 of the Code of Civil Procedure as to payment under a decree is appealable under s. 244, as it falls under the definition of a "decree;" no separate suit lies, since the question is *res judicata* between the parties. GURUVAYYA *v.* VUDAYAPPA.

[18 Mad. 26

21.—*Civil Procedure Code* (1882), *ss.* 2 *and* 136 —*Order dismissing a suit—"Decree,"*]—An order dismissing a suit under s. 136 of the Civil Procedure Code (1882) is a decree under the definition contained in s. 2 of the Code, and as such is appealable. MANSINGJI *v.* MEHTA HARIHARRAM NARHARRAM.

[19 Bom. 307

22.—*Order for abatement of suit—Civil Procedure Code* (1882), *s.* 366.] No appeal will lie from an order under the first paragraph of s. 366 of the Code of Civil Procedure, such order neither amounting to a decree nor being specifically appealable under s. 588. *Bhikaji Ram Chandra* v. *Purshotam*, I. L. R. 10 Bom. 220, dissented from. HAMIDA BIBI *v.* ALI HUSEN KHAN.

[17 All. 172

See SUBBAYYA *v.* SAMINADAYYAR.

[18 Mad. 496

23.—*Order dismissing an appeal for default—"Decree," Definition of—Civil Procedure Code* (1882), *ss.* 2 *and* 556.] An order dismissing an appeal for default under s. 556 of the Civil Procedure Code does not fall within the definition of "decree" in s. 2, and there is no appeal from such order. *Ram Chandra, Pandurang Naik* v. *Madhav Purushottam Naik*, I. L. R. 16 Bom. 23, dissented from. JAGARNATH SINGH *v.* BUDHAN.

[23 Calc. 115

APPEAL—*continued.*

(6) DECREES—*continued.*

24.—*Order dismissing appeal for default—"Decree," Definition of—Civil Procedure Code* (1882), *ss.* 2 *and* 556.] An order dismissing an appeal for default is not a "decree" within the definition in s. 2 of the Civil Procedure Code (1882), and no appeal lies therefrom. *Jagarnath Singh* v. *Budhan*, I. L. R. 23 Calc. 115, followed; *Mansab Ali* v. *Nihal Chand*, I. L. R. 15 All. 359, referred to. ANWAR ALI *v.* JAFFER ALI.

[23 Calc. 827

25.—*Order rejecting appeal on default in furnishing security for costs—Civil Procedure Code* (1882), *ss.* 2 *and* 549.] An order rejecting an appeal under s. 549 of the Code of Civil Procedure is not appealable either as an order or as a decree. *Siraj-ul-Huq* v. *Khadim Hussain*, I. L. R. 5 All. 380, overruled. LEKHA *v.* BHAUNA.

[18 All. 101

26.—*Order dismissing application for removal of a trustee—Civil Procedure Code* (1882), *s.* 2—*Trusts Act* (*II of* 1882), *ss.* 55, 60, 61 *and* 74.] No appeal will lie from an order dismissing an application for the removal of a trustee, such order not being a "decree" within the meaning of s. 2 of the Code of Civil Procedure and not being otherwise appealable. WILSON *v.* MACAFEE.

[19 All. 131

27.—*Order dismissing application to be brought on the record as representative of deceased party—Civil Procedure Code* (1882), *ss.* 2 *and* 372.] An appeal will lie from an order dismissing an application under s. 372 of the Code of Civil Procedure to be brought upon a record as representative of a deceased party, such order being a decree with the meaning of s. 2 of the Code. INDO MATI *v.* GAYA PRASAD.

[19 All. 142

28.—*Order declaring the rights of parties to a partition suit in certain specific shares—Civil Procedure Code* (1882), *ss.* 2 *and* 591.] In a suit for partition the Court of first instance (the Munsif) on the 28th of February, 1893, passed the following order:—"Plaintiff is entitled to a moiety of the lands described in the plaint and to a decree thereto. The lands set out in the plaint will, therefore, be divided into two equal shares by a Civil Court Amin, and when that is done, one of these shares will be decreed to plaintiff with costs of the suit." On the 30th June, 1893, the Munsif decreed the suit in accordance with the report of the Amin. On the 11th August, 1893, the defendants filed an appeal from the final decree to the District Judge, and questioned the legality of the order of the 28th February, 1893:—*Held*, that the order of the 28th February, 1893, declaring the rights of parties to a partition in certain specific shares, was a decree within the meaning of s. 2 of the Code of Civil Procedure, and therefore appealable. *Dulhin Golab Koer* v. *Radha Dulari Koer*, I. L. R. 19 Calc. 463, followed. The

APPEAL—*continued.*

(6) DECREES—*concluded.*

defendants not having filed an appeal from that order within thirty days from its date (*see* Art. 15 of Sch. II of the Limitation Act) were not at liberty to question the correctness of the said order, an appeal from it being then barred by limitation. BOLORAM DEY *v.* RAM CHUNDRA DEY.

[23 Calc. 279

29.—*Civil Procedure Code* (1882), *ss.* 2 *and* 591—*Suit for dissolution of partnership and an account—Order directing accounts to be taken—Omission to appeal from preliminary order—Limitation.*] The right of appeal given by Act XII of 1879 in making an order directing accounts to be taken within the definition of a decree, and thus giving an appeal in a preliminary stage of a suit for dissolution of a partnership, did not alter the existing law, which allowed an appeal against such an order on the termination of the trial, that is, in the final decree. In a suit for dissolution of partnership and an account, the Munsif on the 25th April, 1893, passed an order declaring the shares of the parties and directing them to render accounts, stating that "this must be done within fifteen days from this date, after which the final order will be passed," and referred the case to a Commissioner to take the accounts. On the 31st May, 1893, the Munsif decreed the suit, and made defendants Nos. 1 and 2 liable to pay certain sums of money in accordance with the report of the Commissioner. On the 14th July, 1893, defendant No. 1 filed an appeal to the District Judge, in which he questioned the correctness of the preliminary order of the Munsif making him liable as a partner:—*Held*, that the order of the District Judge, allowing the plea of defendant No. 1 and finding that he was not a partner, was right, though no appeal against the preliminary order had been filed within the period of limitation. BISWA NATH CHAKI *v.* BANI KANTA DUTTA.

[23 Calc. 406

30.—*Order appointing commission to effect partition after preliminary decree—Interlocutory order—Effect of not appealing from order—Civil Procedure Code* (1882), *ss.* 2, 244 *and* 591.] *Held*, by the majority of the Full Bench (O'KINEALY, MACPHERSON, TREVELYAN and BANERJEE, JJ.), that an order passed in a suit for partition, subsequently to the preliminary decree appointing a commission to make the partition, is not an order in execution, and, therefore, is not appealable under s. 244 of the Civil Procedure Code. It is an interlocutory order pending the suit which has not been finally decided; and the appellant may take objection to it in an appeal against the final decree. MACLEAN, C. J., thought it unnecessary under the circumstances to decide the point. JOGODISHURY DEBEA *v.* KAILASH CHUNDRA LAHIRY.

[24 Calc. 725

APPEAL—*continued.*

(7) DEFAULT IN APPEARANCE.

31.—*Order dismissing suit in adjourned hearing for non-appearance of plaintiff—Civil Procedure Code* (1882), *ss.* 102, 157 *and* 158.] An order dismissing a suit at an adjourned hearing for non-appearance of the plaintiff and his pleader is an order under s. 157, and its consequential section (102), and not under s. 158, of the Civil Procedure Code (1882), and is appealable. SHRIMANT SAGAJIRAO KHANDERAO *v.* SMITH.

[20 Bom. 73

32.—*Order setting aside ex-parte decree—Civil Procedure Code* (1882), *ss.* 108 *and* 157.] No appeal will lie from an order made under s. 157 read with s. 108 of the Code of Civil Procedure setting aside a decree passed *ex parte* in default of appearance of the defendant on a day to which the hearing of the suit had been adjourned. *Jonardan Dobey* v. *Ramdhone Singh*, I. L. R. 23 Calc. 738, referred to. BHAGWAN DAI *v.* HIRA.

[19 All. 355

(8) EXECUTION OF DECREE.

(*a*) QUESTIONS IN EXECUTION.

33.—*Order on application for execution by one or more joint decree-holders—Civil Procedure Code* (1882), *ss.* 231 *and* 244.] An appeal lies from an order under s. 231 of the Code of Civil Procedure, such an order being one relating to the execution of a decree within the meaning of s. 244. *Gooroo Doss Roy* v. *Ram Ruginee Dossia*, 17 W. R. 136; and *Odhoya Pershad* v. *Mahadeo Dutt Bhandaree*, 17 W. R. 415, distinguished. LAKSHMI AMMAH *v.* PONNASSA MENON

[17 Mad. 394

34.—*Assignment of decree—Limitation—Civil Procedure Code* (1882), *ss.* 232, 244, 540 *and* 588.] Where a Court, on the application of a transferee of a decree for execution decides that he is not a transferee under s. 232 of the Civil Procedure Code, or that, although he is a transferee within the meaning of that section, he is not a representative of a party to the suit, or that by reason of limitation he is not entitled to obtain execution of the decree, it has determined a question or questions mentioned or referred to in s. 244 of the Code, and though not specified in s. 588 an appeal lies under s. 540. *Parmanadas Jiwandas* v. *Vallabji Wallji*, I. L. R. 11 Bom. 506; and *Gulzari Lal* v. *Daya Ram*, I. L. R. 9 All. 46, approved. *Ram Baksh* v. *Panna Lal*, I. L. R. 7 All. 457, considered. *Haladhar Shaha* v. *Hargobind Das Koiburto*, I. L. R. 12 Calc. 405; *Sambasiva* v. *Srinivasa*, I. L. R. 12 Mad. 511; *Rama* v. *Muppil Nayar*, I. L. R. 14 Mad. 478; and *Vilayati Begam* v. *Intizar Begam*, Weekly Notes, All. (1893) 106, referred to. BADRI NARAIN *v.* JAI KISHEN DAS.

[16 All. 483

35.—*Questions between execution-creditor and persons placed on the record as representative of deceased judgment-debtor—Civil Procedure Code* (1882), *ss.* 234, 278 *and* 283.] Certain decree-

APPEAL—*continued.*

(8) EXECUTION OF DECREE—*continued.*

(*a*) QUESTIONS IN EXECUTION—*concluded.*

holders obtained during the lifetime of their judgment-debtor attachment of certain immoveable property as belonging to the said judgment-debtor; but, on the decree-holders seeking to bring the property to sale, one *S D* came forward with an objection that the property was his and was not liable to sale in execution of the decree in question. Pending the decision of the Court on this objection the decree-holders applied to the Court to have the names of *S D* and the widow of the judgment-debtor (who died about the time the previous objection was filed) placed on the record as representatives of the judgment-debtor. *S D* filed a similar objection to this application also; but both objections being heard together on the 6th September, 1892, were dismissed, and *S D* was placed on the record as representative of the deceased judgment-debtor. On appeal by *S D* against "the order of the District Judge of Jaunpur of the 6th September, 1892," it was *held* that the order making *S D* a party to the execution-proceedings as representative of the judgment-debtor rendered any order as to his former objection superfluous, and that order was appealable under s. 244 of the Code of Civil Procedure. SHANKAR DAT DUBE *v.* HARMAN.

[17 All. 245

(*b*) PARTIES TO SUITS.

36.—*Civil Procedure Code* (1882), *ss.* 21, 244, 293 *and* 306—*Default by purchaser in paying deposit—Order refusing remedy against purchaser.*] The purchaser at an execution-sale failed to make the deposit of 25 per cent. under Civil Procedure Code, s. 306, alleging that the property was discovered by him subsequently to the sale to be subject to an incumbrance. The property was put up for sale again and knocked down for a smaller sum. The decree-holder sought in execution to recover the amount of the difference from the first purchaser. The Court of first instance made an order dismissing the application:—*Held*, that an appeal lay against the order in question. Orders made in respect of a default by the purchasers in such a case are in the nature of decrees, and the parties affected must be deemed to be parties to the suit within the meaning of s. 244 of the Code. AMIR BAKSHA SAHIB *v.* VENKATACHALA MUDALI.

[18 Mad. 439

37.—*Purchase by decree-holder at auction-sale—Order for delivery of possession.*] Certain holders of a decree for sale upon a mortgage, having brought the property ordered to be sold to sale, purchased it themselves. Having taken out certificates of sale, they applied to be put in possession of the property purchased by them, and obtained an order for possession. On appeal by the judgment-debtors against this order it was *held* that no appeal lay, the order objected to being one under s. 319 and not under s. 244 of the Code of Civil

APPEAL—*continued.*

(8) EXECUTION OF DECREE—*concluded.*

(*b*) PARTIES TO SUITS—*concluded.*

Procedure. The decree-holder as such was not entitled to the order for possession; he was only entitled to it in his character of auction-purchaser, which character did not bring him within s. 244 as a party to the suit. *Subhajit* v. *Sri Gopal*, I. L. R. 17 All. 222, referred to. GHULAM SHABBIR *v* DWARKA PRASAD.

[18 All. 36

(9) NORTH-WESTERN PROVINCES ACTS.

38.—*N.-W. P. Land Revenue Act* (*XIX of* 1873), *ss.* 113, 214 *and* 219—*Order in partition proceedings—Decision of question of title by a Court of Revenue—Effect of such decision when ex-parte.*] *Held* that the provisions of ss. 214 and 219 of Act XIX of 1873 do not apply to an *ex-parte* decision of a question of title by a Court of Revenue acting in partition proceedings under s. 113 of the said Act. An appeal to the District Judge therefore lies from an order of the Assistant Collector in such proceedings. TULSI PRASAD *v.* MATRU MAL.

[18 All. 210

39.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 189—*Landholder and tenant—Rent payable by tenant—Rate of rent.*] The criterion to be used in deciding whether an appeal lies under s. 189 of Act XII of 1881 is whether the decision would merely affect a particular year, or whether it would supply a plea of *res judicata*, if not appealed against, for all succeeding years in which the landlord and tenant stood in the same relation as when the suit was brought. *Radha Prasad Singh* v. *Mathura Chaube*, I. L. R. 14 All. 50, referred to. MOHIB ALI KHAN *v.* MARTIN.

[16 All. 51

40.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 189—*Suit to recover arrears of revenue—"Rent"—"Revenue."*] The term "rent," as used in s. 189 of Act XII of 1881, cannot be extended so as to include revenue. Hence where a plaintiff sued to recover arrears of revenue alleged to be payable to the plaintiff by the defendants under an agreement, the defendants being admitted to be inferior proprietors of the land in respect of which the revenue claimed was payable, it was *held* that no appeal lay to the District Judge under s. 189 of Act XII of 1881. TILAKDHARI RAI *v.* SOGHRA BIBI.

[18 All. 302

41.—*N.-W. P. Rent Act* (*XII of* 1881), *ss.* 189 *and* 93.]—*Question as to rate of rent payable by the tenant not in issue in the appeal.*] Under s. 189 of Act XII of 1881, an appeal lies in a suit under s. 93 of the Act, where the rent payable by the tenant *has been* a matter in issue and has been determined. It is not necessary that the rent payable by the tenant should be a matter in issue in the appeal. SARJU PRASAD *v.* HAIDAR KHAN.

[18 All. 463

APPEAL—*continued.*

(10) ORDERS.

42.—*Order setting aside sale in execution of decree for rent—Bengal Tenancy Act (VIII of 1885), s. 173.*] No appeal lies from an order setting aside a sale under s. 173 of the Bengal Tenancy Act. ROGHU SINGH *v.* MISRI SINGH.

[21 Calc. 825

43.—*Order for pre-emption—Decree conditional on payment of pre-emptive price within a fixed period—Appeal after expiry of such period.*] *Held* that plaintiffs in a pre-emption suit, who had obtained a decree conditioned on payment by them of the pre-emptive price within a certain fixed period, could, after the expiration of such period, appeal against such decree on the ground that a condition of the contract out of which their right to pre-empt arose had not been embodied in the decree. *Kodai Singh* v. *Jaisri Singh*, I. L. R. 13 All. 376, referred to. WAZIR KHAN *v.* KALE KHAN.

[16 All. 126

44.—*Order releasing from attachment after-acquired property of insolvent judgment-debtor—Civil Procedure Code* (1882), *s.* 357, *and s.* 588, *cl.* 17.] Where some of the scheduled creditors of a judgment-debtor who had been declared an insolvent, and in respect of whose property a receiver had been appointed, but who had not been discharged, presented an application to the Court purporting to be made under s. 357 of the Civil Procedure Code, praying for the sale of certain property which had come by inheritance to the judgment-debtor, and the Court, also purporting to act under s. 357 of the Code, made an order on such application allowing the property in question to be released from attachment on deposit by the insolvent of one-third of the scheduled debts:—*Held* that the order was appealable as an order under s. 357 by virtue of s. 588, cl. (17) of the Code of Civil Procedure. GANESHI LAL *v.* MUSARRAT ALI; GIRWAR LAL *v.* MUSARRAT ALI.

[16 All. 234

45.—*N.-W. P. Rent Act (XII of 1881), s. 190—Appeal from Court of Revenue to District Judge—Order of remand by District Judge under s. 562 of the Code of Civil Procedure—Civil Procedure Code* (1882), *s.* 588, *cl.* 28.] Section 190 of Act XII of 1881 makes s. 562 of Act XIV of 1882 applicable to appeals from a Court of Revenue to a District Judge, and where in such a case a District Judge has made an order of remand under s. 562 an appeal will lie from such order to the High Court under s. 588, cl. 28 of Act XIV of 1882. PARTAP SINGH *v.* NARAIN DAS.

[16 All. 375

46.—*Order granting review of judgment—Civil Procedure Code* (1882), *s.* 629.] No appeal lies from an order granting a review of judgment except as provided by s. 629 of the Civil Procedure Code. *Bombay and Persia Steam Navigation Co.* v. *S. S. "Zuari,"* I. L. R. 12 Bom. 171, followed. HAR NANDAN SAHAI *v.* BEHARI SINGH.

[22 Calc. 3

47.—*Order granting review of judgment—Civil Procedure Code* (1882), *s.* 629.] In general final appeal an order for review can only be challenged upon the grounds stated in s. 629 of the Civil Procedure Code. *Har Nandan Sahai* v. *Behari Singh*, I. L. R. 22 Calc. 3, followed. BARODA CHURN GHOSE *v.* GOBIND PROSHAD TEWARY.

[22 Calc. 984

48.—*Order granting review of judgment—Civil Procedure Code* (1882), *ss.* 626 *and* 629.] No appeal will lie from an order granting a review of judgment except under the conditions specified in s. 629 of the Code of Civil Procedure. *Bombay and Persia Steam Navigation Co.* v. *S. S. "Zuari."* I. L. R. 12 Bom. 171, followed. DARYAI BIBI *v.* BADRI PRASAD.

[18 All. 44

See CHUNILAL HAJARIMAL *v.* SONIBAI.

[21 Bom. 328

49.—*Order granting review of judgment—Civil Procedure Code* (1882), *s.* 629—*Grounds of appeal.*] No appeal lies from an order granting a review of judgment except in cases specified in s. 629 of the Civil Procedure Code. *Bombay and Persia Steam Navigation Company* v. *S. S. "Zuari,"* I. L. R. 12 Bom. 171, followed. *Har Nandan Sahai* v. *Behari Singh*, I. L. R. 22 Calc. 3; and *Baroda Churn Ghose* v. *Gobind Pershad Tewary*, I. L. R. 22 Calc. 984, referred to. That the Court which has granted the review has done so without sufficient reasons is not a valid ground of appeal under s. 629. MUNNI RAM CHOWDHRY *v.* BISHEN PERKASH NARAIN SINGH.

[24 Calc. 878

50.—*Order granting review of judgment—Civil Procedure Code* (1882), *ss.* 626, 629, 586 *and* 591—*Order granting a review in a suit of Small Cause Court nature valued at less than Rs.* 500.] In a suit of a nature cognizable by a Small Cause Court and valued at less than Rs. 500, an order granting a review was passed by the Appellate Court without recording any reason for it. An appeal was preferred against that order to the High Court under s. 629 of the Code of Civil Procedure:—*Held*, that the order was bad being in contravention of the provisions of s. 625 of the Code of Civil Procedure:—*Held*, also, upon the objection of the respondent that no appeal lay against the above order, that the appeal was permissible under s. 629, the provisions whereof are not controlled or superseded by s. 591 of the Code. Questions raised in an application for review are totally different from those raised in the suit; a review can only be granted on special grounds, and it may well be that although an appeal is not allowed from the

APPEAL—*continued.*

(10) ORDERS—*continued.*

final decree in the suit, an appeal is allowable from an order granting a review, which could re-open the case after it had been disposed of. GYANUND ASRAM *v.* BEPIN MOHUN SEN.

[22 Calc. 734

51.—*Civil Procedure Code* (1882), *s.* 331—*Specific Relief Act* (*Act I of* 1877), *s.* 9—*Proceedings in nature of fresh suit—Sub-ordinate Judge, Jurisdiction of.*] *A* obtained a decree for possession of certain land against *B* and others, under s. 9 of the Specific Relief Act. He was obstructed by the defendant, a third party, when he went to take possession. Thereupon he applied to the Munsif's Court for the removal of the obstruction, and his application was registered as a regular suit under s. 331 of the Code of Civil Procedure. The Munsif gave the plaintiff a decree. On appeal the Subordinate Judge reversed it. Against the order of the Subordinate Judge the plaintiff appealed to the High Court on the ground that the proceedings under s. 331 were merely a continuation of the original suit under s. 9 of the Specific Relief Act, and as no appeal lay against a decision passed under that section, no appeal lay to the Subordinate Judge:—*Held*, that proceedings under s. 331 of the Code are in the nature of a fresh suit between the decree-holder and a third party, and therefore an appeal lay to the Subordinate Judge. *Ravloji Tamoji* v. *Dholapa Raghu*, I. L. R. 4 Bom. 123, distinguished. *Muttammal* v. *Chinnana Gounden*, I. L. R. 4 Mad. 220; and *Kalima* v. *Nainan Kutti*, I. L. R. 13 Mad. 520, referred to. NASIR ALI FAKIR *v.* MEHER ALI.

[22 Calc. 830

52.—*Order of Collector confirming sale for arrears of dâk cess under Public Demands Recovery Act* (*Bengal Act VII of* 1880).] A revenue-paying *taluk* was sold for arrears of *dâk* cess under the Public Demands Recovery Act (Bengal Act VII of 1880). Application was made to the Collector to set aside the sale, but the application was refused:—*Held*, following the ruling in *Sadhu Saran Sing* v. *Panchdeo Lal*, I. L. R. 14 Calc. 1, that an appeal lay to the Revenue Commissioner against the Collector's order affirming the sale. LALA PRYAG LAL *v.* JAI NARAYAN SINGH.

[22 Calc. 419

53.—*Order setting aside ex-parte decree—Civil Procedure Code* (1882), *ss.* 108 *and* 591.] The words "affecting the decision of the case" in s. 591 of the Civil Procedure Code mean "affecting the decision of the case with reference to the merits of it." Where an *ex-parte* decree was set aside by an order under s. 108 of the Civil Procedure Code, and the suit heard upon the merits and dismissed:—*Held*, that such order was not an order affecting the decision of the case under s. 591, and was not appealable under that section. CHINTAMONY DASSI *v.* RAGHOONATH SAHOO.

[22 Calc. 981

APPEAL—*continued.*

(10) ORDERS—*continued.*

54.—*Order striking off application for execution but maintaining attachment—Order not disposing of or affecting execution of decree.*] A decree-holder in execution of his decree attached certain immoveable property of his judgment-debtor; but on his taking no other steps to complete the execution of the decree the Court struck off the execution-proceedings maintaining the attachment. Against this order the decree-holder appealed:—*Held* that, inasmuch as the order in question was not a judicial disposal of the application for sale and would not preclude the decree-holder from continuing the execution of his decree, an appeal from such order was superfluous and must be dismissed. RATTANJI *v.* HARI HAR DAT DUBE.

[17 All. 243

55.—*Order rejecting claim of alleged representative of deceased plaintiff, and for abatement of suit—Civil Procedure Code* (1882), *ss.* 366 *and* 367—*Dispute as to right to represent a deceased plaintiff—Right of his adopted son to continue the suit.*] The plaintiff in a partition suit in which his brother was defendant died, and an application was made on behalf of a boy alleged to have been adopted by the widow of the deceased under his authority that his name be brought on to the record as plaintiff. This application was made within six months of the death of the original plaintiff. The Court of first instance rejected the application, which the defendant opposed on the ground that the boy had not been adopted, and dismissed the suit on the ground that it had abated:—*Held*, that appeals lay against the rejection of the above application, and also against the dismissal of the suit: *Per curiam*:—A dispute within the meaning of Civil Procedure Code, s. 367, need not be between persons claiming to represent the deceased plaintiff. SUBBAYYA *v.* SAMINADYYAR.

[18 Mad. 496

See HAMIDA BIBI *v.* ALI HUSEN KHAN.

[17 All. 172

56.—*Civil Procedure Code* (1882). *s.* 366—*Order rejecting application for suit to abate.*] *Held*, that an order rejecting an application that a suit might be declared to have abated by reason of the death of the plaintiff and the invalidity of an application to the Court to bring his legal representative on to the record was not one of the orders contemplated by s. 366 of the Code of Civil Procedure, and that no appeal would lie therefrom. BHAGWAN DAS *v.* MAHARAJA OF BHARTPUR.

[17 All. 286

57.—*Order remanding case—Civil Procedure Code, s.* 588, *cls.* 16 *and* 28—*Superintendence of High Court—Civil Procedure Code, s.* 622.] Land having been sold in execution of decree, one claiming that it had been held by the judgment-debtor *benami* for him applied that the sale be cancelled. He was not a party to the decree, and on that

APPEAL—*continued.*

(10) ORDERS—*concluded.*

ground his petition was dismissed. The Appellate Court was of opinion that it had been wrongly dismissed and remanded the case to be disposed of on the merits:— *Held*, on revision, that the order remanding the case was not appealable, and consequently that the petition for revision was maintainable. TIMMANNA BANTA *v.* MAHABALA BHATTA.

[19 Mad. 167

58.—*Order of remand in suit cognizable by Small Cause Court—Civil Procedure Code, ss.* 588 (28) *and* 586.] In a suit to recover Rs. 238 (being the purchase-money for certain land) on failure to perform the contract to sell the plaintiff the land, the Munsif decided the case on the issue of limitation only, and *held* the suit was barred. The Judge held it was not barred, and made an order remanding the case for trial on the other issues. It was objected that the suit being for a sum less than Rs. 500 and of a nature cognizable by a Small Cause Court, no appeal lay against the order of remand:—*Held*, following *Collector of Bijnor* v. *Jafar Ali Khan*, I. L. R. 3 All. 18; and *Mahadev Narsinh* v. *Ragho Keshav*, I. L. R. 7 Bom. 292, that the right of appeal conferred by s. 588, Civil Procedure Code, is not controlled by s. 588, and therefore an appeal lay. CHINNATAMBI GOUNDEN *v.* CHINNANA GOUNDEN.

[19 Mad. 391

59.—*Order numbering and registering as suit objection of obstruction to execution of decree—Civil Procedure Code* (1882), *ss.* 328 *and* 331—*Complaint made more than a month from the time of the obstruction—Objection with respect to limitation in appeal.*] Although no appeal lies against an order passed under s. 331 of the Civil Procedure Code (Act XIV of 1882) numbering and registering as a suit a complaint made at a time beyond a month from the time of the obstruction in an application under s. 328, such order can be objected to when the final order, which is appealable as having the force of a decree under s. 331, is appealed against. The Judge in appeal is bound to entertain the objection that is then made and to dismiss the application when he finds that it has been wrongly admitted. LALA *v.* NARAYAN.

[21 Bom. 392

60.—*Order refusing to accept deposit on account of sale in execution of decree—Civil Procedure Code, s.* 310A.] No appeal will lie from an order passed under s. 310A of the Code of Civil Procedure refusing to accept a deposit tendered under that section on the ground that it was too late. BASHIR-UD-DIN *v.* JHORI SINGH.

[19 All. 140

(11) PROBATE.

61.—*Order refusing to make person party-defendant to an application for probate—Probate and Administration Act* (*V of* 1881), *ss.* 53 *and* 86.] Section 86 read with s. 53 of the Probate and Administration Act (V of 1881), only allows an appeal to the High Court in cases in which an appeal is allowable under the Code of Civil Procedure. No appeal therefore lies against an order refusing to make a person opposing probate a party-defendant to an application for probate. *Abirunnissa Khatoon* v. *Komurunnissa Khatoon*, I. L. R. 13 Calc. 100; and *Karman Bibi* v. *Misri Lal*, I. L. R. 2 All. 904, followed. KHETTRAMONI DASI *v.* SHYAMA CHURN KUNDU.

[21 Calc. 539

(12) OBJECTIONS BY RESPONDENT.

62.—*Civil Procedure Code* (1882), *s.* 561—*Withdrawal of appeal—Failure of objections.*] If an appeal in which objections have been filed under s. 561 of the Code of Civil Procedure is withdrawn, the objections cannot be heard. *Bahadoor Singh* v. *Bhugwan Dass*, 1 Agra. 23; *Ram Pershad Ojha* v. *Bharosa Kunwar*, 9 W. R. 328; *Shama Churn Ghose* v. *Radha Kristo Chaklanuvis*, 11 W. R. 210; *Puresh Narain Roy* v. *Watson & Co.*, 23 W. R. 229; *Subhai Dayalji* v. *Raghunathji Vasanji*, 10 Bom. 397; *Dhondi Jagannath* v. *Collector of Salt Revenue*, I. L. R. 9 Bom. 28; and *Maktab Beg* v. *Hasan Ali*, I. L. R. 8 All. 551, referred to. JAFAR HUSAIN *v.* RANJIT SINGH.

[17 All. 518

(13) DISMISSAL OF APPEAL.

63.—*Civil Procedure Code* (1882), *ss.* 551 *and* 577—*Power of the lower Court to amend decree after dismissal of appeal—Practice.*] The dismissal of an appeal under s. 551 of the Civil Procedure Code (1882) leaves the decree of the lower Court untouched, neither confirmed, nor varied, nor reversed, and it remains the decree of the lower Court which can amend it, in order to bring it into accordance with its judgment. BAPU *v.* VAJIR.

[21 Bom. 548

64.—*Civil Procedure Code*, 1882, s. 351—*Effect of dismissal of appeal—Amendment or alteration of decree—Power of the High Court to amend decree of lower Court improperly drawn—Civil Procedure Code* (1882), *ss.* 206 *and* 551—*Practice.*] The order of dismissal of an appeal under s. 551 of the Civil Procedure Code being a final determination of, and an adjudication on, the questions raised in the appeal, is a "decree;" and in this respect there is no distinction between an appeal which is dismissed under s. 551 of the Civil Procedure Code, and an appeal which is dismissed under any other section of the Code after full hearing. *Royal Reddi* v. *Linga Reddi*, I. L. R. 3 Mad. 1, referred to. When an appeal is dismissed under s. 551 of the Civil Procedure Code, or, in the case of a second appeal, when the decree is one of dismissal, the effect practically is to make the decree which is confirmed the final decree to be executed in the

suit; and the High Court making such order has power to amend the decree of the lower Court which has been in effect confirmed by it, so as to bring it in conformity with the judgment which is also confirmed. UMA SUNDARI DEVI *v.* BINDU BASHINI CHOWDHRANI.

[24 Calc. 759

APPEAL IN CRIMINAL CASES.

Col.

1. Acquittals, Appeals from ... 47
2. Acts 48
3. Criminal Procedure Code ... 48
4. Practice and Procedure ... 48

See CASES UNDER JUDGMENT—CRIMINAL CASES.

See REVIEW—CRIMINAL CASES.

[19 Bom. 732

See REVISION — CRIMINAL CASES — GENERALLY.

[19 Mad. 238

——, Power of High Court in.

See EVIDENCE ACT, S. 167.

[19 Bom. 749

See VERDICT OF JURY — POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749

——, Rejection of.

See JUDGMENT—CRIMINAL CASES.

[21 Calc. 92
[17 All. 241
[20 Bom. 540

(1) ACQUITTALS, APPEALS FROM.

1.—*Criminal Procedure Code* (1882), *s.* 417—*Appeal by Government.*] An appeal on behalf of Government in the exercise of the powers conferred by s. 417 of the Code of Criminal Procedure should not be entertained when the judgment appealed from is based upon facts, and the conclusions of the Court are such as may reasonably be arrived at upon the facts found. *Empress of India* v *Gayadin*, I. L. R. 4 All. 148, referred to. QUEEN-EMPRESS *v.* ROBINSON.

[16 All. 212

2.—*Criminal Procedure Code* (1882), *s.* 477—*Exercise of jurisdiction on appeal by Government—Grounds of objection—Practice.*] *Per* RANADE, J.:—The High Court, in exercising jurisdiction in the matter of appeals against acquittals, should confine its exercise to the particular grounds of objection which are raised by Government against the acquittal complained of. QUEEN-EMPRESS *v.* KARIGOWDA.

[19 Bom. 51

3.—*Cattle Trespass Act (I of 1871), s. 22—Order for compensation.*] No appeal lies against an order under s. 22 of the Cattle Trespass Act. *Queen-Empress* v. *Raya Lakshma*, I. L. R. 10 Bom. 230; and *Dhiku* v. *Dinonath Deb*, I. L. R. 15 Calc. 712, followed. QUEEN-EMPRESS *v.* LAKSHMI NARAYAN.

[19 Mad. 238

(3) CRIMINAL PROCEDURE CODE.

4.—*Criminal Procedure Code* (1882), *s.* 411—*Appeal from a conviction by a Presidency Magistrate—Sentence.*] Section 411 of the Code of Criminal Procedure (Act X of 1882) does not allow an appeal in the case of a conviction by a Presidency Magistrate where the sentence inflicted is six months' rigorous imprisonment and a fine of Rs. 125, or in default a further period of three months' rigorous imprisonment. *Schein* v. *Queen-Empress* I. L. R. 16 Calc. 799, followed. QUEEN-EMPRESS *v.* HARI SAVBA.

[20 Bom. 145

(4) PRACTICE AND PROCEDURE.

5.—*Presentation of appeal—Criminal Procedure Code* (1882), *s.* 419.] The Criminal Procedure Code, s. 419, requires that a criminal appeal shall be delivered to the proper officer of the Court, either by the appellant or his pleader Where a petition of appeal was not presented to the Court, but was deposited in a petition box kept for the convenience of parties within the Court precincts and intended for the deposit of papers for the Court:—*Held*, that it had not been presented and was rightly returned for legal presentation. QUEEN-EMPRESS *v.* VASUDEVAYYA.

[19 Mad. 354

6.—*Presentation of appeal petition by the clerk of the appellant's pleader—Criminal Procedure Code* (1882), *s.* 419.] Presentation of an appeal petition by the clerk of the appellant's pleader is equivalent to a presentation by the pleader himself when it is signed by him and he is duly authorised. QUEEN-EMPRESS *v.* KARUPPA UDAYAN.

[20 Mad. 87

7.—*Abatement of appeal—Criminal Procedure Code* (1882), *s.* 431—*Appeal by accused against conviction—Death of appellant—Power of revision by High Court.*] Two persons, *M* and *N*, were convicted of criminal breach of trust, and each was sentenced to one year's rigorous imprisonment and fine of Rs. 1,000. Both prisoners filed an appeal to the High Court. *N* died pending his appeal. On *M's* appeal the High Court passed an order acquitting him and reversing his conviction and sentence. Thereupon one of the relatives of the deceased *N* applied to the High Court to set aside the conviction and sentence passed in his case and order the fine to be refunded:—*Held*, that on *N's* death his appeal abated under s. 431 of the Code of Criminal Procedure (Act X of 1882).

APPEAL IN CRIMINAL CASES— *continued.*

(4) PRACTICE AND PROCEDURE—*continued.*

As the case turned on the appreciation of evidence, the High Court declined to interfere in the exercise of its revisional jurisdiction, referring the legal representatives of the deceased to the Governor in Council for redress. IN RE NABISHAH.

[19 Bom. 714

8.—*Duty of Appellate Court trying criminal appeal.*] If the Judge of the Appellate Court has any doubt that the conviction is a right one, whatever the original Court has done, the Judge of the Appellate Court should discharge the accused. In this respect the duty of an Appellate Court in criminal cases is not similar to that of an Appellate Court in civil cases. In the latter case the Court must be satisfied before setting aside an order of the lower Court that the order is wrong. *Protab Chunder Mukerjee* v. *Empress*, 11 C. L. R. 25, followed. MILAN KHAN *v.* SAGAI BEPARI.

[23 Calc. 347

9.—*Appellate Court, Powers of, in cases of trial by jury when there has been misdirection—Criminal Procedure Code* (1882), *ss.* 418. 423 *and* 537.] An accused in a trial by jury is entitled to the verdict of the jury on questions of fact, and where a verdict is vitiated owing to misdirection by the Judge, the Appeal Court has no option but to set aside the verdict and direct a retrial. Were the Appeal Court to go into the facts in such a case, it would be substituting the decision of the Judges of that Court for the verdict of the jury, who have the opportunity of seeing the demeanour of the witnesses and weighing the evidence with the assistance which this affords, whereas the Judges of the Appeal Court can only arrive at a decision on the perusal of the evidence. *Makin* v. *Attorney-General of New South Wales*, L. R. (1894) A. C. 57, referred to. Section 537 of the Code of Criminal Procedure does not warrant an Appeal Court, in a case where there has been misdirection in a charge to a jury, going into the evidence with a view to decide whether there is sufficient evidence to justify a conviction. Under s. 418 an appeal in a case tried by a jury lies on matters of law only, and the Appeal Court has no power to try the accused on matters of fact. The word "erroneous" in cl. (*d*) of s. 423 must not be read as "wrong on the facts," but must be read in connection with the words that follow as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a misunderstanding of the law. WAFADAR KHAN *v.* QUEEN-EMPRESS.

[21 Calc. 955

10.—*Criminal Procedure Code* (1882), *s.* 423—*Power of the Appellate Court—Altering a finding of acquittal into one of conviction.*] The Appellate Court can, under the provisions of s 423 of the Criminal Procedure Code, in an appeal from a conviction, alter the finding of the lower Court and find the appellant guilty of an offence of which he was acquitted by that Court. QUEEN-EMPRESS *v.* JABANULLA.

[23 Calc. 975

11.—*Criminal Procedure Code* (1882), *s.* 423 (*b*) (3)—*Enhancement of sentence—Alteration from fine to imprisonment—Powers of Appellate Court.*] *Held* that the alteration by an Appellate Court of a sentence of a fine of Rs. 50 or in default two months' simple imprisonment to a sentence of six months' rigorous imprisonment was an enhancement of the sentence, and, as such, prohibited by s. 423 of the Code of Criminal Procedure. *Queen-Empress* v. *Dansang Dada*, I. L. R. 18 Bom. 751, referred to. QUEEN-EMPRESS *v.* LACHMI KANT.

[18 All. 301

QUEEN-EMPRESS *v.* DANSANG DADA.

[18 Bom. 751

12.—*Criminal Procedure Code* (1882), *s.* 423 (*b*) (3) *Penal Code* (*Act XLV of* 1860). *ss.* 147 *and* 379—*Enhancement of sentence—Jurisdiction of Magistrate.*] In a case where the accused were convicted by a Deputy Magistrate of the offence of rioting under s. 147, and theft under s. 379, of the Penal Code, and sentenced to four months for the first, and two months for the latter, offence, but on appeal the District Magistrate, considering the case to be one of theft rather than rioting, abandoned the sentence under s. 147, but upheld the conviction under s. 379, of the Penal Code, and sentenced them to six months' rigorous imprisonment:—*Held*, that what the District Magistrate had in effect done was to enhance the sentence under s. 379 of the Penal Code, which he had no power to do under s. 423, cl. (*b*), sub-section 3 of the Code of Criminal Procedure. RAMZAN KUNJRA *v.* RAMKHELAWAN CHOWBE.

[24 Calc. 316

ARPIN SHEIK *v.* AROBDI DATIA.

[24 Calc. 318 note

APPEAL TO PRIVY COUNCIL. *Col.*

1. Cases in which Appeal lies or not ... 51
   (*a*) Finality of Decree or Order ... 51
   (*b*) Substantial Question of Law ... 51
   (*c*) Concurrent Judgments on Fact 52
   (*d*) Valuation of Appeal ... 53
2. Practice and Procedure 53
3. Stay of Execution pending Appeal... 54
4. Effect of Privy Council Decree or Order 55

See LIMITATION ACT, s. 7.

[18 Mad. 484

See CASES UNDER PRIVY COUNCIL, PRACTICE OF.

——, Application for leave to.

See LIMITATION ACT, ART. 177.

[18 Mad. 484
[19 Bom. 301

APPEAL TO PRIVY COUNCIL—*contd.*

(1) CASES IN WHICH APPEAL LIES OR NOT.

(*a*) FINALITY OF DECREE OR ORDER.

1.—*Order refusing to appoint Receiver in a suit—Civil Procedure Code* (1882), *s.* 595—*Letters Patent of the High Court, ss.* 39 *and* 40.] There is no appeal to Her Majesty in Council against an order refusing the appointment of a Receiver in a suit. Such order does not finally decide any matter which is directly in issue in the cause in respect to the right of the parties, and is not "final" within the meaning of cls. (*a*) and (*b*) of s. 595 of the Civil Procedure Code and s. 39 of the Letters Patent; nor is the matter a special case falling within the terms of cl. (*c*) of s. 59 of the Code or s. 40 of the Letters Patent. *Justices of the Peace for Calcutta* v. *Oriental Gas Company*, 8 B. L. R. 433; *Lutf Ali Khan* v. *Asgur Reza*, I. L. R. 17 Calc. 455; *Kishen Persad Pandey* v. *Tilukdhari Lall*, I. L. R. 18 Calc. 182; and *Rahimbhoy Habibhoy* v. *Turner*, I. L. R. 15 Bom. 155; L. R. 18 I. A. 6, referred to. CHUNDI DUTT JHA *v.* PUDMANUND SINGH BAHADUR.

[22 Calc. 928

2.—*Order of remand on issue finally deciding whole case—Refusal of certificate of leave to appeal to Her Majesty in Council—Civil Procedure Code*, (1882), *ss.* 562, 565, 595, 600 *and* 601.] An order comprising the decision of the Appellate High Court upon a cardinal issue in a suit, that issue being one that goes to the foundation of the suit, and that can never, while this decision stands, be disputed again, is a final decree for the purposes of appeal to the Queen in Council, notwithstanding that there may be subordinate inquiries yet to be made in disposing of the suit. *Rahimbhoy Habibhoy* v. *Turner*, I. L. R. 15 Bom. 155; L. R. 18 I. A. 6, referred to and followed. The certificate, of which the grant was part of the procedure in the admission of such an appeal, was refused by the High Court on the ground that the proposed appeal was from an order remanding a suit under s. 562, Civil Procedure Code; and that orders of remand under that section were, by the practice of the Court, treated as not final within s. 595, cl. (*a*). That practice is probably correct; but here the order only purported to be under s. 562, which was not applicable. The first Court had not disposed of the suit upon a preliminary point, so as to have excluded evidence of facts appearing to the Appellate Court essential; and s. 565 appeared to be applicable rather than s. 562. The Appellate Court had reversed, once for all, the decision of the first Court upon an issue as to the making and validity of a will, which issue governed the whole case. MUZHAR HOSSEIN *v.* BODHA BIBI.

[17 All. 112
[L. R. 22 I. A. 1

(*b*) SUBSTANTIAL QUESTION OF LAW.

3.—*Rejection of application to take additional evidence on appeal—Civil Procedure Code* (1882), *ss.* 568 *and* 596.] The rejection of an application under s. 568 to an Appellate Court to take additional evidence on appeal cannot be said to involve any "substantial question of law" within the meaning of s. 596 of the Code so as to give the right to an appeal to the Privy Council. IN THE GOODS OF PREM CHAND MOONSHEE; UPENDRA MOHAN GHOSE *v.* GOPAL CHANDRA GHOSE.

[21 Calc. 484

4.—*Civil Procedure Code* (1882), *s.* 596—*Substantial question of law.*] *Per* JARDINE, J.—Where the High Court in appeal has confirmed the decree of the lower Court and has taken substantially the same view of the facts, and where, upon the facts as found by both Courts, no question of law arises, leave to appeal to the Privy Council should be refused. *Per* RANADE, J.:—There is a distinction between the confirmation of a decree and the affirmation of the decision and findings of the Courts of first instance by the High Court. The substantial question of law referred to in s. 596 of the Code of Civil Procedure (Act XIV of 1812) need not directly arise out of the concurrent findings of fact, but it is enough if it is involved in those findings, and can, if the appeal is allowed, be raised in the course of the argument. IN RE VISHWAMBHAR PANDIT.

[20 Bom. 699

(*c*) CONCURRENT JUDGMENTS ON FACT.

5.—*Case in which no question of law is involved—Civil Procedure Code* (1882), *ss.* 596 *and* 600—*Finding of facts not concurrent but in effect the same.*] Where there is no point of law involved in a case the mere fact that the finding of the Appellate Court does not in terms coincide with the finding of the Original Court is not sufficient, where the findings of fact of the two Courts are in effect the same, to give a right of appeal to the Privy Council, notwithstanding that the value of the suit is more than Rs. 10,000. *In the Matter of the Petition of Ashghar Reza*, I. L. R. 16 Calc. 287, distinguished. THOMPSON *v.* CALCUTTA TRAMWAYS COMPANY.

[21 Calc. 523

6.—*Civil Procedure Code* (1882), *s.* 596—*Restriction of power in India to grant leave to appeal to Her Majesty in Council—Concurrence of two Courts in deciding fact.*] Where the decree of an Appellate Court has affirmed the decision of the Court immediately below it upon a issue of fact, and no substantial question of law is involved, no appeal is open under s. 596 of the Code of Civil Procedure, and leave to appeal should not be granted by the High Court in such a case. NIRBHAI DAS *v.* RANI KUAR.

[16 All. 274

APPEAL TO PRIVY COUNCIL—*contd.*

(1) CASES IN WHICH APPEAL LIES OR NOT—*concluded.*

(*c*) CONCURRENT JUDGMENTS ON FACT—*concld.*

7.—*Original Court's decision, on fact, affirmed by the first Appellate Court—Question of fact—Question of law not arising—Civil Procedure Code* (1882), *s.* 596.] The Appellate High Court had, by the decree now appealed from, affirmed upon the evidence the decision of the High Court in the original jurisdiction as to the fact on which the judgment depended, *viz.*, whether the defendant had attained full age at the time when he had executed the first of two mortgages, for the foreclosure whereof the suit was brought. No question of law, either as to the construction of documents or any other point, was raised. *Held*, that the present appeal could not be entertained. See *Nirbhai Das* v. *Rani Kuar*, I. L. R. 16 All. 274. TULSI PERSHAD BHAKT *v.* BENAYEK MISSER.

[23 Calc. 918
[L. R. 23 I. A. 102

(*d*) VALUATION OF APPEAL.

8.—*Value of property affected by decree—Civil Procedure Code* (1882), *s.* 596.] In an application for leave to appeal to Her Majesty in Council the value of the property ostensibly affected by the decree sought to be appealed was below Rs. 10,000; but it appeared that the suit in appeal in which the said decree had been passed was connected with another suit relating to the same property in which a decree had been passed which was the subject of another similar application, and that the aggregate value of the two decrees was much above Rs. 10,000, and that it could not be known which of such decrees would affect which specific portion of the property in question:—*Held*, that under the above circumstances the application under consideration should be granted under the last paragraph of s. 596 of the Code of Civil Procedure. IN THE MATTER OF THE PETITION OF KHWAJA MUHAMMAD YUSUF.

[18 All. 196

9.—*Burmah Courts Act* (*XI of* 1889), *s.* 40—*Burmah Civil Courts Act* (*XVII of* 1875), *s.* 49—*Probate and Administration Act* (*V of* 1881), *ss.* 3 *and* 86—*Code of Civil Procedure* (1882), *ss.* 595 *and* 614.] No appeal lies to the High Court from a final decree passed by the Recorder of Rangoon in the exercise of Original Civil Jurisdiction, where the value of the subject-matter of the suit is above ten thousand rupees, but an appeal lies to Her Majesty in Council. A decree passed by the Recorder of Rangoon, in a suit for grant of probate of a will, is a final decree passed by him in the exercise of Original Civil Jurisdiction. ESSOF HASSHIM DOOPLY *v.* FATIMA BIBI *alias* MAH POH.

[24 Calc. 30

(2) PRACTICE AND PROCEDURE.

10.—*Evidence—Exhibits marked for identification afterwards marked as "admitted on both sides" by Bench Clerk—Certificate by Court as to the endorsement on exhibits—Record of appeal to the Privy Council.*] In an application for a certificate that a limited meaning should be placed upon endorsements made by the Bench Clerk on certain exhibits printed in the paper-book in a suit, which had gone on appeal to the Privy Council, the Court, considering the reasons for the application to have arisen from the nature of the case and from the contentions on either side, left the matter to be dealt with by their Lordships of the Judicial Committee, at the same time directing its order to be forwarded to the Privy Council. RATTAN KOER *v.* CHOTAY NARAIN SINGH.

[21 Calc. 476

(3) STAY OF EXECUTION PENDING APPEAL.

11.—*Civil Procedure Code* (1882), *ss.* 603 *and* 608—*Stay of execution before appeal admitted—Practice.*] Where a petition for leave to appeal to the Privy Council from a decree of the High Court has been presented, the High Court may grant a stay of execution of its decree, although the appeal has not yet been admitted under s. 603 of the Civil Procedure Code (Act XIV of 1882). JANBAI *v.* SALE MAHOMED JAFFERBHOY.

[19 Bom. 10

12.—*Order for security to be furnished by respondent in Privy Council—Order made after decree appealed against—Liability for mesne profits of persons giving security—Civil Procedure Code, s.* 608—*Revocation of surety—Contract Act* (*IX of* 1872) *s.* 130—*Construction of security bond.*] The present plaintiff purchased land brought to sale in execution of a decree and was put in possession. The sale was set aside by the High Court, and the purchaser was ousted. He preferred an appeal to the Privy Council, and the High Court directed that security be given for the mesne profits and the due delivery of the property without waste in the event of the appeal being successful. The present defendants furnished security and executed a document under which the plaintiff who had succeeded in the Privy Council now sued to enforce his rights. It appeared that after the date of the instrument abovementioned a payment was made from the income of the property in satisfaction of a decree obtained by the zemindar against the present plaintiff for arrears of *poruppu* previously accrued due:—*Held* (1) that the order of the High Court requiring security to be furnished was not *ultra vires*, and that the instrument abovementioned was enforceable; (2) that the defendants who had given no personal guarantee were not competent to put an end to the security under the provisions of the Contract Act relating to revocation of a surety; (3) that on the right construction of the instrument the period for the profits of which the defendants were chargeable was that between the date of the instrument and the date of the decision of the Privy Council; (4) that the defendants should be credited with the amount paid in satisfaction of the decree for *poruppu*. NARAYANAN CHETTI *v.* ARUNACHELLAM CHETTI.

[19 Mad. 140

APPEAL TO PRIVY COUNCIL—*concld.*

(4) EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

13.—*Effect of order of Privy Council dismissing suit on power of High Court to make orders in suit—Petition for the amendment of an order in Council dismissing a suit—Receiver's liability to account—Rights as between the Administrator-General and executors transferring estate to him, and the petitioner interested in the estate—Act II of* 1874, *s.* 31.] A Court having appointed a Receiver in a suit has authority, incidental to its jurisdiction, to order him to account, although the suit may be no longer pending. The estate is in its hands, and the Receiver is its officer, and the dismissal of the suit by an Appellate Court does not alter that state of things. The original Court in such a case may permit parties interested to intervene on questions as to the accounts, and may deal with costs and other matters. In a suit by a plaintiff interested in the estate, wholly based on the alleged illegality of its transfer by the executors named in the will of a Hindu, to the Administrator-General (Act II of 1874, s. 31), decrees were made by the High Court, Original and Appellate, in the plaintiff's favour. The Judicial Committee, however, held the transfer legal; and the suit, brought against the Administrator-General and the executors as co-defendants, was dismissed:—*Held*, on the plaintiff's petition for such modification of the order dismissing the suit as would maintain what had been ordered below relating to the accounts, thereby enabling the High Court to bring matters in dispute to an end, that there were no grounds for the amendment. Their Lordships' opinion was that the High Court would not be deprived of any jurisdiction in that respect by the dismissal of the suit. If it should be necessary to the carrying out of the transfer that the Administrator-General should take proceedings, he could do so. To make orders upon the Court's Receiver was within its powers; and either the Receiver or the executors could be called to further account without the petitioner being met by the defence of prior adjudication of the matter (s. 13 of the Code of Civil Procedure.) IN THE MATTER OF THE PETITION OF PREM LALL MULLICK; ADMINISTRATOR-GENERAL OF BENGAL *v.* PREM LALL MULLICK.

[22 Calc. 1011
[L. R. 22 I. A. 203

APPEARANCE, DEFAULT IN.

See APPEAL—DEFAULT IN APPEARANCE.

[20 Bom. 736
[19 All. 355

See CIVIL PROCEDURE CODE, SS. 102 AND 103.

[22 Calc. 8

APPELLANT.

——, Death of.

See ABATEMENT OF SUIT—APPEALS.

[16 All. 211

APPELLANT—*concluded.*

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[21 Bom. 102
[20 Mad. 51

See PARTIES—SUBSTITUTION OF PARTIES—GENERALLY.

[16 All. 211

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 102

——, Poverty of.

See SECURITY FOR COSTS—APPEALS.

[21 Calc. 526

APPELLATE COURT.

		Col.
1.	Exercise of Powers in various cases	57
2.	Evidence and Additional Evidence on Appeal	57
3.	Rejection or Admission of Evidence admitted or rejected by Court below	58
4.	Errors affecting or not merits of case	58
5.	Objection taken for first time on Appeal	60

——, Duty of.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[23 Calc. 347

See JUDGMENT—CIVIL CASES.

[19 Bom. 551

See REMAND—GROUND FOR REMAND.

[19 Mad. 157

See WILL—EXECUTION.

[21 Calc. 279

——, Objection taken for first time in.

See WAIVER.

[19 Mad. 127

——, Power of.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[21 Calc. 955
[23 Calc. 975
[18 All. 301
[18 Bom. 751

See CIVIL PROCEDURE CODE, s. 544.

[17 Mad. 265

See COMMITMENT.

[23 Calc. 350

See DECREE—FORM OF DECREE—GENERAL CASES.

[18 Mad. 415

See EVIDENCE—CIVIL CASES—RENT RECEIPTS.

[24 Calc. 251

APPELLATE COURT—*continued.*

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 480

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 475

See MADRAS FOREST ACT, S. 4.

[17 Mad. 193

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

16 All. 5

[19 Mad. 151

See RECOGNIZANCE TO KEEP PEACE.

[17 All. 67

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.

[17 All. 67

(1) EXERCISE OF POWERS IN VARIOUS CASES.

1.—*Plaint, Amendment of—Appellate Court's power to amend plaint—Suit for rent converted into one for ejectment—Variance between pleading and proof—Civil Procedure Code* (1882), *ss.* 53 *and* 582.] An amendment of a plaint, which materially transforms the nature of the claim, cannot be made under s. 53 of the Code, and certainly not in appeal. Section 53 permits amendment of the plaint before judgment, and not after. The larger powers conferred on Appellate Courts by s. 582 do not authorize such a material transformation of a suit in appeal. BAI SHRI MAJIRAJBA *v.* MAGANLAL BHAISHANKAR.

[19 Bom. 303

(2) EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

2.—*Civil Procedure Code* (1882), *s.* 568.] The test as to whether additional evidence should be received in an Appellate Court under s. 568 of the Code of Civil Procedure depends upon the question whether or not the Appellate Court requires the evidence "to enable it to pronounce judgment or for any other substantial cause"; as to this the Appellate Court is to be the sole judge. IN THE GOODS OF PREM CHAND MOONSHEE; UPENDRA MOHAN GHOSE *v.* GOPAL CHANDRA GHOSE.

[21 Calc. 484

3.—*Civil Procedure Code* (1882), *s.* 568—*Remand—Direction by Appellate Court to take further evidence.*] In a suit on a hypothecation-bond the plaintiff relied in bar of limitation on endorsements of part-payments appearing on the bond. The Court of first instance held that the endorsements were genuine. The Court of first appeal remanded the suit for further evidence to be taken with regard to the endorsements and directed the Court to record an opinion on the question of the handwriting of the endorsements; and held

APPELLATE COURT—*continued.*

(2) EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*concluded.*

upon the return of the evidence that the endorsements were forgeries and dismissed the suit:—*Held*, that the additional evidence was legally taken and admitted under s. 568. SHRINIVASACHARIAR *v.* RANGAMMAL.

[18 Mad. 94

4.—*Remand to the Appellate Court—Additional evidence in Appellate Court—Finding of fact upon evidence taken after remand—Civil Procedure Code* (1882), *s.* 568.] In a second appeal, the High Court set aside the decrees of the lower Courts on the ground that certain issues raised in the suit were not considered by those Courts, and remanded the case to the lower Appellate Court for a proper decision of the case. The lower Appellate Court took evidence on the issues not tried before, and came to findings of fact on that evidence:—*Held*, that the lower Appellate Court tried the case, not as an original case, but as an appeal, and acting under the powers given to it took fresh evidence. BENI PERSHAD KUARI *v.* NAND LAL SAHU.

[24 Calc. 98

(3) REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.

5.—*Document not sufficiently stamped admitted in evidence by lower Court.*] A Court of first instance having admitted in evidence a document improperly stamped, the Appellate Court cannot question its admissibility. SHIDDAPA *v.* IRAVA.

[18 Bom. 737

(4) ERRORS AFFECTING, OR NOT, MERITS OF CASE.

6.—*Non-joinder of plaintiff's undivided brother—Suit by mortgagee against sons of a deceased judgment-debtor—Decree against members of joint family—Parties, Non-joinder of—Civil Procedure Code* (1882), *s.* 578.] A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October, 1877. The decree provided for payment of the secured debt in various instalments by May, 1895. The mortgagor died in 1883 having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons. The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891, describing himself, being allowed to amend his plaint, as managing coparcener and representative of the joint family. A plea of non-joinder was raised, *inter alia*, on the ground

APPELLATE COURT—*continued.*

(4) ERRORS AFFECTING, OR NOT, MERITS OF CASE—*concluded.*

that the plaintiff had an undivided brother:—*Held*, that since the plaint (as amended) showed that the plaintiff sued as managing member of his undivided family, the omission to join his brother was a merely formal error, and was not fatal to the suit. RAMAYYA *v.* VENKATARATNAM.

[17 Mad. 122

7.—*Refusal of Court to summon witnesses—Civil Procedure Code* (1882), *ss.* 159 *and* 578.] Where an application to a Civil Court for witnesses to be summoned has been refused on the ground that the applicant had negligently or with intention to delay the hearing postponed the making of his application for a summons until a time when it would be impossible to obtain the attendance of the witnesses at the hearing, and the refusal is made one of the grounds of appeal against the decree in the suit:—*Held*, that s. 578 of the Code of Civil Procedure would apply if the irregularity in refusing the application did not affect the merits of the case. If it did affect the merits of the case, the ground of appeal would be a good one. BHAGWAT DAS *v.* DEBI DIN.

[16 All. 218

8.—*Execution of decree against representative of debtor—Civil Procedure Code* (1882), *ss.* 234, 248 *and* 578 — *Application by decree-holder for execution of decree by substitution on death of the judgment-debtor to the Court where the decree has been transferred.*] A decree was transferred to another Court for execution. Pending the proceedings, one of the judgment-debtors died. On an application to that Court by the judgment-creditor to execute the decree against the legal representative of the deceased judgment-debtor, a notice was issued under s. 248 of the Code of Civil Procedure. The legal representative objected that the Court had no jurisdiction to entertain the application, and that the application should have been made under s. 234 of the Code to the Court that passed the decree:—*Held*, that even assuming that an application under s. 234 to the Court which passed the decree was a necessary preliminary to proceedings under s. 248 by the Court executing the decree, the omission to make it was only an irregularity which did not affect the merits of the case, and, under s. 578, the order of the Court of first instance should not have been reversed on account of such irregularity. SHAM LAL PAL *v.* MODHU SUDAN SIRCAR.

[22 Calc. 558

9.—*Civil Procedure Code* (1882), *s.* 578—*Illegal order of remand—Irregularity affecting the merits.*] Where a District Court reversed the District Munsif's decree and remanded the case for a revised finding on the merits: *Held*, that this procedure was *ultra vires* and illegal, and that as the irregularity might have affected the merits of the case, s. 578, Civil Procedure Code, was inapplicable. MALIKARJUNA *v.* PATHANENI.

[19 Mad. 479

APPELLATE COURT—*continued.*

(5) OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

10.—*Notice to quit.*] An objection as to the necessity of notice to quit is one which may be taken on special appeal. DODHU *v.* MADHAVRAO NARAYAN GADRE.

[18 Bom. 110

11.—*Parties—Suit for specific performance—Practice.*] An objection that certain of the defendants should not have been made parties to a suit for specific performance of an agreement because they were not parties to the agreement cannot be taken in second appeal for the first time; as it only involves a question of practice. DODHU *v.* MADHAVRAO NARAYAN GADRE.

[18 Bom. 110

12.—*Defect of parties—Suit for payment of mortgage money or foreclosure—Non-joinder of person interested in the mortgaged property, Effect of—Transfer of Property Act, s.* 85—*Civil Procedure Code* (1882), *s.* 32.] The non-joinder in a suit to which Chap. IV of Act IV of 1882 applies of a person interested in the mortgaged property within the meaning of s. 85 of that Act, and of whose interest the plaintiff has notice, is a fatal defect in the suit, unless cured by the action of the Court under s. 32 of the Code of Civil Procedure; and where such non-joinder is brought to the notice of the Court, the Court will give effect to the objection and dismiss the suit, even though such objection be raised for the first time in appeal. *Mata Din Kasodhan* v. *Kazim Husain*, I. L. R. 13 All. 432; *Janki Prasad* v. *Kishen Das*, I. L. R. 16 All. 478; and *Bhawani Prasad* v. *Kallu*, I. L. R. 17 All. 537, referred to. GHULAM KADIR KHAN *v.* MUSTAKIM KHAN.

[18 All. 109

13.—*Civil Procedure Code* (1882), *s.* 44—*Misjoinder of causes of action—Objection not taken in Court of first instance.*] An objection under s. 44 of the Code of Civil Procedure as to misjoinder of causes of action should be taken in the Court of first instance and not for the first time on appeal. Where such an objection had been raised for the first time in appeal the High Court in second appeal declined to entertain it. *Dondiba Krishnaji Patel* v. *Ramchandra Bhagvat*, I. L. R. 5 Bom. 554, followed. MAULA *v.* GULZARI SINGH.

[16 All. 130

14.—*Question of jurisdiction taken for first time on appeal.*] An objection to the jurisdiction of the Court may be taken at any stage of the suit, and the Court is not only competent but bound to take notice of it. In this case it was taken and allowed on appeal. RANCHOD MORAR *v.* BEZANJI EDULJI.

[20 Bom. 86

15.—*Jurisdiction—Suit for property wrongly taken in execution of decree—Separate suit brought where proceeding should have been in execution.*] Where a suit for the recovery of lands taken

APPELLATE COURT—*continued.*

(5) OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

by the decree-holder in excess of his decree has been held not to lie under s. 244 of the Civil Procedure Code, but the suit had been instituted in the Court which had jurisdiction to execute the decree, the plaint may be regarded as an application to that Court for determining the question whether the lands are covered by the decree, and the suit does not therefore fail for want of jurisdiction. *Purmessuree Pershad Narain Singh* v. *Jankee Koeer*, 19 W. R. 90; and *Azizuddin Hossein* v. *Ramanugra Roy*, I. L. R. 14 Calc. 605, referred to and followed:—*Held* also, that in such a case, it is incumbent upon the defendant to raise the plea of jurisdiction in the Court of first instance, the question being not a pure question of law, but a question which would depend upon facts. BIRU MAHATA *v.* SHYAMA CHURN KHAWAS.

[22 Calc. 483

16.—*Objection to jurisdiction on the ground of wrong valuation of suit—Suits Valuation Act (VII of 1889), s. 11.*] The High Court *held* that it was not at liberty to entertain an objection that the suit was not within the pecuniary limits of the District Munsif's jurisdiction, as it appeared that the appellant had not been prejudiced on the merits. MUTHUSAMI MUDALIAR *v.* NALLAKULANTHA MUDALIAR.

[18 Mad. 418

17.—*Objection taken for first time in second appeal that preliminaries to suit have not been taken—Question of jurisdiction.*] In a suit for declaration of the plaintiffs' right to have their names registered as purchasers of a tenure an objection having been raised in second appeal, that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register:—*Held*, that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. That objection, however, being taken for the first time in second appeal, was disallowed. BHIKAJI BAJI *v.* PANDU.

[19 Bom. 43

18.—*Objection based on point of law—Second appeal.*] An objection based upon a point of law may be made in second appeal, provided it does not involve the taking of any additional evidence on matters of disputed facts. GAVDAPPA *v.* GIRIMALLAPPA.

[19 Bom. 331

19.—*Question of deficiency of Court-fee not raised in the Court of first instance—Court-Fees Act, s. 12—Estoppel.*] The plaintiffs, suing in respect of certain plots of land, by mistake undervalued their claim with regard to the said land, and in consequence paid an insufficient court-fee on their plaint. This mistake was not discovered until the case had come in appeal before the High Court, and when discovered the deficiency was at once made good:—*Held*, that no plea as to the deficiency in the court-fee having been raised, as it might have

APPELLATE COURT—*concluded.*

(5) OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*concluded.*

been, by the defendant before the decision of the suit in the Court of first instance, such plea could not be raised for the first time in appeal. WILAYAT ALI KHAN *v.* UMARDARAZ ALI KHAN.

[19 All. 165

APPOINTMENT, POWER OF.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[19 Bom. 647
[21 Bom. 709

See WILL—CONSTRUCTION.

[18 Bom. 1

——, Exercise of.

See TRANSFER OF PROPERTY ACT, s. 53.

[22 Calc. 185

APPROVER.

See PARDON.

[24 Calc. 492

——, Evidence of.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

——, Prosecution of.

See PRACTICE—CRIMINAL CASES—APPROVERS.

[24 Calc. 492

——, Trial of, jointly with other accused.

See SESSIONS JUDGE, JURISDICTION OF.

[22 Calc. 50

ARBITRATION.

		Col.
1.	Arbitration under Special Acts ...	63
2.	Reference or Submission to Arbitration	63
3.	Appointment of Arbitrators and Umpires	64
4.	Awards	65
	(*a*) Construction and Effect of Awards	65
	(*b*) Validity of Awards and Ground for setting them aside	65
5.	Private Arbitration	67

See CASES UNDER APPEAL—ARBITRATION.

——, Agreement to refer to.

See SPECIFIC RELIEF ACT, s. 21.

[23 Calc. 956

——, Letter of submission to.

See STAMP ACT, SCH. I, ART. 5.

[19 Bom. 32

——, Power to refer to.

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 13.

[19 Bom. 553

ARBITRATION—*continued.*

——, Reference to.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[20 Bom. 304

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[21 Bom. 335

(1) ARBITRATION UNDER SPECIAL ACTS.

1.—*Act XX of* 1863, *s.* 16—*Power to refer suit to arbitration—Suit for dismissal of members of devastanam committee—Validity of award.*] Where a suit for dismissal of the members of a *devastanam* committee and damages was referred under Act XX of 1863, s. 16, to arbitrators who passed an award dismissing them as prayed and decreeing a portion of the damages claimed with interest:—*Held*, that the Court had power to refer the matter to the arbitrators, and the arbitrators had power to decide it and to award damages with interest, provided the amount, inclusive of interest, did not exceed the amount claimed in the plaint. PERUMAL NAIK *v.* SAMINATHA PILLAI.

[19 Mad. 498

2.—*Dekhan Agriculturists Relief Act (XVII of 1879), ss.* 47 *and* 74—*Civil Procedure Code* (1882), *ss* 518—521 *and* 522—*Power to file private award to which agriculturist debtors are parties.*] A Civil Court can file a private award to which agriculturist debtors are parties without adjusting the accounts under the Dekhan Agriculturists Relief Act. *Gangadhar* v. *Mahadu*, I. L. R. 8 Bom. 20, followed. MOHAN *v.* TUKARAM.

[21 Bom. 63

3.—*N.-W. P. Land Revenue Act, ss.* 222 *to* 231—*Award by one arbitrator only—Effect of such award and of the decision of the Settlement Officer thereon.*] The provisions of ss. 222 to 231 of Act XIX of 1873 contemplate that the award therein dealt with should be an award made by more arbitrators than one. Where therefore a Settlement Officer had delivered a decision under s. 230 upon what purported to be an award by one arbitrator only, it was *held* that such so-called award and the decision thereon of the Settlement Officer would not prevent the matters dealt with therein being reopened in a civil suit. *Jatan Singh* v. *Mahadeo Singh*, Weekly Notes, All. (1886) 180, distinguished. PARSIDH RAI *v.* RAJI NAIN RAI.

[18 All. 172

(2) REFERENCE OR SUBMISSION TO ARBITRATION.

4.—*Agreement to refer future differences to arbitration—Naming of arbitrators—Civil Procedure Code* (1882), *s.* 523.] A general agreement to refer future differences to arbitration comes within s. 523 of the Civil Procedure Code (Act XIV of 1882), and may be filed under

ARBITRATION—*continued.*

(2) REFERENCE OR SUBMISSION TO ARBITRATION—*concluded.*

that section. The section is not confined to cases in which a dispute actually existing at date of agreement is agreed to be referred to arbitration. But the agreement must name the arbitrator or arbitrators, and an agreement which provides for the future appointment or election of arbitrators does not fall within the section. The effect of the last clause of s. 523 is to give the parties to such an agreement power to nominate the arbitrator, even when they have agreed that he shall be appointed by the Court. In such cases the Court must appoint their nominee. FAZULBHOY MEHRALI CHINOY *v.* BOMBAY AND PERSIA STEAM NAVIGATION COMPANY.

[20 Bom. 232

5.—*Application for probate—Opposition by caveator—Reference by executor to arbitration—Effect of award—Jurisdiction of Testamentary Court to decide question of award—Power of executor to refer question of execution of will to arbitration.*] Any dispute (for instance as to the due execution of a will) in a suit on the Testamentary side of the High Court can be referred to arbitration, and the Court will recognize such reference and the award made in it. An executor having propounded a will and applied for probate, a caveat was filed denying the execution of the alleged will, and the matter was duly registered as a suit. The executor and the caveatrix subsequently referred "the dispute" to arbitration, and an award was made that the alleged will had not been executed. The executor nevertheless subsequently continued the suit. At the hearing the caveatrix pleaded the award and contended that it was binding on the plaintiff (executor). The plaintiff (executor) contended that the Court as a Court of probate had no jurisdiction to try any question as to the award, but was limited only to the question of the execution of the will:—*Held*, CANDY, J., that the Court had jurisdiction to determine the question as to the award:—*Held*, also, that the award was binding on the executor. GHELLABHAI ATMARAM *v* NANDUBAI.

[20 Bom. 238

—In the same case on appeal—*Semble* (FARRAN, C. J., and STRACHEY, J.)—An executor, against whose application for probate a caveat has been entered, cannot submit to arbitration the question whether the will propounded by him was duly executed by the deceased. GHELLABHAI ATMARAM *v.* NANDUBAI.

[21 Bom. 335

(3) APPOINTMENT OF ARBITRATORS AND UMPIRES.

6.—*Civil Procedure Code* (1882), *ss.* 510 *and* 524—*Refusal of person appointed arbitrator to act—Appointment of arbitrator by Judge—Effect of s.* 524 *on such appointment.*] The words "so far as they are consistent with any agreement so filed" in s. 524 of the Code of Civil Procedure do not mean that the agreement must contain in

ARBITRATION—*continued.*

(3) APPOINTMENT OF ARBITRATORS OR UMPIRES—*concluded.*

every case an express provision as to what ought to be done if any arbitrator is unwilling to act, in order that a Judge may act in conformity to it, and that s. 510 has otherwise no application. The reasonable construction is that the action of the Judge under s. 510 should not be inconsistent with the agreement, if it contains any special provision on the subject. BALA PATTABHIRAMA CHETTI *v.* SEETHARAMA CHETTI.

[17 Mad. 498

(4) AWARDS.

(*a*) CONSTRUCTION AND EFFECT OF AWARDS.

7.—*Maintenance, Grant of villages for—Nature of grant, whether absolute, or resumable.*] A grant of villages was made by a *talukdar* to his younger son for maintenance. The elder son inherited the family *taluk*. In the next generation, in 1869, an award was made by a body of Oudh *talukdars* as arbitrators on the submission of the disputants, who directed that the village "given as maintenance be decreed in favour of the grantee to continue as heretofore." The questions raised in that award were whether the villages had been granted only for life, or were inheritable by the descendants of the grantee, and whether the *talukdar*, or the holder of the grant for the time being, was liable for the revenue on the villages. The same questions were now raised by the third generation, who were the great-grandsons of the grantor, on the construction of the award. There was no limitation in the original grant of the villages to the grantee personally, nor was the grant expressly declared to be to him and his lineal descendants through males. But possession had followed in that order, and the *talukdar* had always paid the revenue. The award, not having been filed within six months after the passing of the Oudh Estates Act, 1869, did not come within s. 33 of that Act:—*Held* (1) That the award was not on that account invalid. It was obligatory upon both parties to the submission and upon those whose interests they represented. (2) That evidence of the antecedent possession of the villages, as well as of the *quasi*-judicial acts of the arbitrators, was admissible. (3) That the terms of the award conferred upon the grantee and his descendants, the right to possess the villages free of rent to the *talukdar*, who remained responsible for the revenue. (4) That the villages would not revert to the *talukdar's* line until the line of the grantee's descendants should have become extinct. BHAIYA ARDAWAN SINGH *v.* UDEY PRATAB SINGH.

[23 Calc. 838
[L. R. 23 I. A. 64

(*b*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

8.—*Submission to arbitration—Award not disposing of all the matters referred—Finality of award—Validity of award—Waiver—Consent of parties—Partition*] The ground for holding an award to be invalid on account of its not disposing of all the matters referred appears to be that there is an implied condition in the submission of the parties to the arbitration that the award shall dispose of all. This condition may be waived by the consent of the parties before the arbitrators. The partition of joint estate, consisting of different properties, having been submitted to arbitration, and the parties agreeing to a division being made by steps, and that each division should be final without any condition that the award should not be final while part remained undivided:—*Held*, in a suit brought by one of the parties for partition of the whole estate, after such a division of part, that although cases cited as to the invalidity of an incomplete award might have been applicable had the arbitrators awarded as to only part of the property of their own authority, and without that of the parties, it was competent to the latter to agree before the arbitrators to the division being made as it had been; and that here the partition, as to the property divided, was final. Only a decree for the partition of the undivided residue could be made MAKUND RAM SUKAL *v.* SALIQ RAM SUKAL.

[21 Calc. 590
[L. R. 21 I. A. 47

9.—*Ground for setting aside award—Arbitrator receiving evidence from one side in absence of other side—Misconduct—Civil Procedure Code* (1882), *s.* 521.] An arbitrator ought not to hear or receive evidence from one side in the absence of the other side, without (if he does) giving the other side affected by such evidence the opportunity of meeting and answering it. This proposition is, however, subject to the qualification that the parties may agree that a reference may be conducted in any particular way, and such an agreement may be either express or implied from their conduct during the arbitration, and they may also expressly or by their conduct waive their objection to an irregular course of conduct on the part of the arbitrator. Where an arbitrator received certain papers and documents from the defendants in a suit referred to his arbitration, together with a letter from the defendants containing certain documents sent to him and made his award without giving the plaintiffs an opportunity of seeing the said papers and documents, and of meeting the inferences deducible from them:—*Held*, that there was such a breach of duty on the part of the arbitrator as entitled the plaintiffs to have the award set aside. CURSETJI JEHANGIR KHAMBATTA *v.* CROWDER.

[18 Bom. 299

10.—*Omission to fix time for delivery of award—Award not signed by the arbitrators in the presence of each other—Civil Procedure Code* (1882), *ss.* 508 *and* 516.] An award is not invalid merely because no time has been fixed for the making of the award, s. 508 of the Code of Civil Procedure being directory and not manda-

ARBITRATION—*continued.*

(4) AWARDS—*concluded.*

(*b*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*concluded.*

tory. *Har Narain Singh* v. *Bhagwant Kuar*, I. L. R. 10 All. 137, followed. It is necessary, as provided by s. 516 of the Code, that all the arbitrators agree to the terms of the award, but there is no provision of law requiring them to sign it in the presence of each other. *Bhabasundari Dasi* v. *Makhanlal Dey*, 8 B. L. R. 125, followed. MUTHUKUTTI NAYAKAN *v.* ACHA NAYAKAN.

[18 Mad. 22

11.—*Reference applied for by agent without authority—Knowledge and tacit ratification by principal—Estoppel.*] In a suit which was defended by an agent (*am-mokhtar*) on behalf of the defendant, the agent applied for a reference to arbitration although he had no power to do so under the *ammokhtarnamah*. After the submission of the award, objection was made on behalf of the defendant that the agent had no authority to apply for or consent to the reference The objection was overruled by the Court, and a decree made in accordance with the award with one slight modification in the defendant's favour :—*Held*, that although the agent was not authorized to apply for or consent to a reference, the defendant, having been aware of the proceedings and tacitly ratified the action of his agent, could not be allowed to question the legality of the award, and the award was not void *ab initio*. *Uniraman* v. *Chathan*. I. L. R. 9 Mad. 451, referred to. SATURJIT PERTAP BAHADOOR SAHI *v.* DULHIN GULAB KOER.

[24 Calc. 469

(5) PRIVATE ARBITRATION.

12.—*Application to file private award—Objection to award, Effect of—Power of Court—Civil Procedure Code* (1882), *ss.* 520, 521, 525 *and* 526.] *Held* by the Full Bench (PETHERAM, C. J., and PRINSEP, PIGOT, MACPHERSON and GHOSE, JJ.)—Where an application is made to a Court for filing a private award, and objections are raised in a verified written statement, and the objections are such as fall within s. 521 of the Code of Civil Procedure, the Court is not bound to hold its hand and reject the application, but it is the duty of the Court to inquire into the validity of the objections raised, and thereupon determine whether the award should be filed or not. *Per* PRINSEP, PIGOT and MACPHERSON, JJ.—Where on such an application an objection is taken that the matters in dispute were never referred to arbitration, and is therefore not on the grounds mentioned in s. 521, the Court has no jurisdiction to deal with it, but should reject the application and refer the parties to a regular suit. SURJAN RAOT *v.* BHIKARI RAOT.

[21 Calc. 213

13.—*Civil Procedure Code* (1882), *ss.* 520, 521 *and* 526—*Refusal by Court to file award—"Grounds shown."*] In s. 526 of the Code of Civil Procedure the word "shown" is not equivalent to "alleged," but it is necessary that one of the grounds mentioned

ARBITRATION—*continued.*

(5) PRIVATE ARBITRATION—*continued.*

in s. 520 or s. 521 should be proved to the satisfaction of the Court before the Court is justified in refusing to file the award. *Dutto Singh* v. *Dosad Bahadur Singh*, I. L. R. 9 Calc. 575; and *Dandekar* v. *Dandekars*, I. L. R. 6 Bom. 663, followed; *Hurronath Chowdhry* v. *Nistarini Chowdhrani*, I. L. R. 10 Calc. 74; and *Iohamoyee Chowdhranee* v. *Prosunno Nath Chowdhri*, I. L. R. 9 Calc. 557, dissented from. JAGAN NATH *v.* MANNU LAL.

[16 All. 231

14.—*Civil Procedure Code* (1882), *ss.* 525 *and* 526—*Objection to application to file an award in Court that one party had not agreed to refer any matter to arbitration—Jurisdiction of Court to determine whether the parties had or had not referred the matter in question to arbitration.*] An objection to an application made under s. 525 of the Code of Civil Procedure that the parties had not agreed to refer to arbitration any matter, or had agreed to refer some only of the matters determined by the award, or that the document alleged to be an award was not an award of the arbitrators, is an objection which must be considered and determined under s. 526 upon evidence by the Court to which the application is made. *Chowdhri Murtaza Hossein* v. *Bechunnissa*. L. R. 3 I. A. 209; *Samal Nathu* v. *Jaishankar Dalsukram*, I. L. R. 9 Bom. 254; *Venkatesh Khando* v. *Chanapaavda*, I. L. R. 17 Bom. 674; *Lala Iswari Prasad* v. *Bir Bhanjan Tewari*, 8 B. L. R. 315; 15 W. R. F. B. 9; *Hussaini Bibi* v. *Mohsin Khan*, I. L. R. 1 All. 156; *Surjan Raot* v. *Bhikari Raot*, I. L. R. 21 Cal. 213; and *Muhammad Nawaz Khan* v. *Alam Khan*, I. L. R. 18 Calc. 414; L. R. 18 I. A. 73, referred to. AMRIT RAM *v.* DASRAT RAM.

[17 All. 21

15.—*Application to file award—Civil Procedure Code* (1882), *ss.* 521, 522, 525 *and* 526—*Objections as to factum or validity of submission and award.*] Where on an application to file an award under ss. 525 and 526, Civil Procedure Code (Act XIV of 1882), objections, which in the opinion of the Court are not merely frivolous or colourable, are raised to the factum or validity of the submission and award, the Court has no jurisdiction to deal with them and must refer the parties to a regular suit. *Samal Nathu* v. *Jaishanker Dalsukram*, I. L. R. 9 Bom. 254; and *Surjan Raot* v. *Bhikari Raot*, I. L. R. 21 Calc. 213, followed *Amrit Ram* v. *Dasrat Ram*, I. L. R. 17 All. 21, not followed. TEJPUR DEWCHAND *v.* MAHOMED JAMAL.

[20 Bom. 596

16.—*Application to file award—Objection that submission was revoked before award made—Jurisdiction of Court to determine objection—Subsequent suit to annul award—Civil Procedure Code* (1882), *ss.* 521, 522 *and* 526—*Right of suit.*] The plaintiff's case was that arbitrators, to whom differences between him and the defendant had been referred, had out of enmity to him and at the defendant's instance, made a fraudulent award on 17th February after he had revoked his submission

ARBITRATION—*concluded.*

(5) PRIVATE ARBITRATION—*concluded.*

and had antedated it as on 1st February; that the defendant had instituted proceedings under Civil Procedure Code, Chap. XXXVII, and his objections to the above effect having been overruled, a decree was passed in terms of the award. He now sued to have it declared that neither the decree nor the award was binding:—*Held*, that the Court had jurisdiction to determine the genuineness or validity of the award in the proceedings under Chap. XXXVII, and that the present suit was not maintainable. CHINTAMALLAYYA *v.* THADI GANGIREDDI.

[20 Mad. 89

ARBITRATOR.

See CASES UNDER ARBITRATION.

ARCHITECT, CERTIFICATE OF, IN BUILDING CONTRACT.

See CONTRACT—BREACH OF CONTRACT.

[19 Mad. 178

ARMENIANS.

See ENGLISH LAW.

[24 Calc. 216

ARMS ACT (XI of 1878).

——, s. 19.—*Unlawful possession of arms—Temporary custody of arms not for use as such.*] The mere temporary possession without a license of arms for purposes other than their use as such, as, for instance, where a servant is carrying his master's gun to a blacksmith for repairs, or where a blacksmith has a gun left with him for repairs, is not an offence within the meaning of s. 19 of the Indian Arms Act, 1878. *Queen-Empress* v. *William*, Weekly Notes, All. (1891), 208; and *Queen-Empress* v. *Bhure*, I. L. R. 15 All. 27, referred to. QUEEN-EMPRESS *v.* TOTA RAM.

[16 All. 276

ARMY ACTS (44 & 45 Vict. c. 58), s. 151.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.

[24 Calc. 102

ARREST.

See ATTACHMENT — ATTACHMENT OF PERSON.

[23 Calc. 128

See COMPENSATION—CIVIL CASES.

[18 Bom. 717

See FOREIGNERS.

[18 Bom. 636

See WARRANT OF ARREST.

[18 Bom. 636

See WRONGFUL CONFINEMENT.

[19 Bom. 72

——, **Escape from.**

See PENAL CODE, S. 186.

[22 Calc. 759

—— **without warrant.**

See ESCAPE FROM CUSTODY.

[19 Mad. 310

ARREST—*concluded.*

See PENAL CODE, S. 332.

[18 All. 246

ARTICLES OF ASSOCIATION.

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

[18 Bom. 152
[20 Bom. 654

ASSAM LAND AND REVENUE REGULATION (I of 1886), ss. 96 and 154.

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[23 Calc. 514
[24 Calc. 751

——, s. 154.—*Right to obtain a settlement—Jurisdiction of Civil Court.*] The question as to the right of a party to obtain a settlement from the Revenue authorities is not excluded from the jurisdiction of the Civil Court by the provisions of s. 154 of the Assam Land and Revenue Regulation. PATAN MARIA *v.* BHABIRAM DUTT BARNA.

[24 Calc. 239

ASSETS, CLAIMS ON.

See COMPANY—WINDING UP—CLAIMS ON ASSETS.

[16 All. 53
[19 Mad. 85

ASSOCIATION, ILLEGAL.

See COMPANY—FORMATION AND REGISTRATION.

[19 Mad. 31, 200
[20 Mad. 68

——, **Withdrawal from.**

See COMPANY—WINDING UP—CLAIMS ON ASSETS.

[19 Mad. 85

ATTACHMENT.

		Col.
1.	Subjects of Attachment ...	72
	(*a*) Building and House Materials	72
	(*b*) Debts	72
	(*c*) Equity of Redemption ...	73
	(*d*) Salary	73
2.	Attachment before Judgment ...	73
3.	Attachment of Person ...	75
4.	Mode of Attachment and Irregularities in Attachment ...	75
5.	Priority of Attachment ...	77
6.	Alienation during Attachment. ...	77
7.	Striking off Execution Proceedings, Effect of, on Attachment ...	79

See CASES UNDER CLAIM TO ATTACHED PROPERTY.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[17 All. 162

ATTACHMENT—*continued.*

See EXECUTION OF DECREE—STRIKING OFF EXECUTION PROCEEDINGS.

[18 All. 49

See GHATWALI TENURE.

[23 Calc. 873

See HEREDITARY OFFICES ACT, s. 13.

[18 Bom. 103

[19 Bom. 250

See INSOLVENCY—AFTER ACQUIRED PROPERTY.

[19 Bom. 232

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[21 Bom. 205

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[16 All. 443

See MADRAS REVENUE RECOVERY ACT, s. 11.

[17 Mad. 404

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.

[22 Calc. 297

See REGISTRATION ACT, s. 49.

[18 Bom. 13

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[22 Calc. 738

See TRANSFER OF PROPERTY ACT, s. 99.

[22 Calc. 813

——, Absence of.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[21 Calc. 639

[18 Mad. 437

——before judgment.

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[20 Bom. 403

See LIMITATION ACT, s. 15.

17 All. 198

[L. R. 22 I. A. 31

——, Irregularity in.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[18 All. 469

——, Objection to.

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUITS.

[18 All. 52

ATTACHMENT—*continued.*

——, Right of.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[16 All. 78

——, Suit for damages for.

See LIMITATION ACT, ART. 49.

[19 Mad. 80

——, Suit to enforce.

See DECLARATORY DECREE, SUIT FOR—ENFORCING OR REMOVING LIEN OR ATTACHMENT.

[17 Mad. 180

——, Suit to set aside order removing.

See CLAIM TO ATTACHED PROPERTY.

[18 Bom. 260

See LIMITATION ACT, ART. 11.

[18 Bom. 260

——, Withdrawal of.

See CLAIM TO ATTACHED PROPERTY.

[18 Bom. 241

(1) SUBJECTS OF ATTACHMENT.

(*a*) BUILDING AND HOUSE MATERIALS.

1.—*Bhagdari Act* (*Bombay Act V of* 1862), *ss.* 1, 3 *and* 5—*Civil Procedure Code* (1882), *s.* 266 (*c*)—*Bhagdari village—Bhag*—"*Homestead*," *Meaning of.*] *Per* FARRAN, C. J., and JARDINE, PARSONS and RANADE, JJ.—The superstructure of a house belonging to a *bhag* in a *bhagdari* village is exempt from attachment under the provisions of the Bhagdari Act (Bombay Act V of 1862). *Per* CANDY, J.—Having regard to the decision in *Pranjivan* v. *Jaishankar*, 4 Bom. A. C. 46, and the object of the Bhagdari Act, it is doubtful whether the Legislature intended to exempt from attachment the materials of a house belonging to a *bhag*. COLLECTOR OF BROACH *v.* VENILAL KESHAVBHAI.

[21 Bom. 588

(*b*) DEBTS.

2.—*Debt of which the amount is unascertained—Principal and agent—Vendor and purchaser—Civil Procedure Code* (1882), *s.* 266.] Where money is due by an agent or vendee to his principal or vendor, the principal's or vendor's claim against his agent or vendee may be attached and sold in execution of a decree against the principal or vendor as a debt under s. 266 of the Code of Civil Procedure, and it is not necessary that the exact amount due to the principal or vendor should be ascertained prior to attachment and sale. *Tuffuzzool Hossein Khan* v. *Rughoonath Pershad*, 7 B. L. R. 186; 14 Moo. I. A. 40; *Tokai Sherob* v. *Davod Mullick Fureedoon Beglar*, 6 Moo. I. A. 510; *Abbott* v. *Abbott and Crump*, 5 B. L. R. 382; and *Hill* v. *Boyle*, L. R. 4 Ex. 260, considered. MADHO DAS *v.* RAMJI PATAK.

[16 All. 286

ATTACHMENT—*continued.*

(1) SUBJECTS OF ATTACHMENT—*concluded.*

(*c*) EQUITY OF REDEMPTION.

3.—*Civil Procedure Code* (1882), *ss.* 266 *and* 274—*Transfer of Property Act* (*IV of* 1882), *s.* 60—*Immoveable property.*] The equity of redemption of the mortgagor is immoveable property, and is, as such, liable to be attached and sold in execution of a decree under s. 266 of the Civil Procedure Code (Act XIV of 1882). Its attachment can be effected under s. 274 of the Code by an order prohibiting the judgment-debtor from dealing with it in any way and all persons from receiving it, such order being proclaimed and notified as therein directed. PARASHRAM HARLAL *v.* GOVIND GANESH PORGAUMKAR.

[21 Bom. 226

(*d*) SALARY.

4.—*Pay of Military Officer in Indian Staff Corps—Officer not officer of regular forces—Civil Procedure Code* (1882), *s.* 263, *cl.* (*h*)—*Army Act*, 1881, *s.* 151—*Public officer.*] An officer of the Indian Staff Corps is a "Public Officer" within the meaning of cl. (*h*) of s. 266 of the Civil Procedure Code, read with the interpretation clause (s. 2) of the Code. His pay is therefore subject to attachment in execution of a decree against him, but the operation of the attachment must be restricted to pay received from the Indian Government. The pay of an Officer of the regular forces is not so subject to attachment. The attachment in this case was allowed subject to a decree previously passed against the defendant by which, under s. 151 of the Army Act, half his pay was ordered to be deducted and applied in payment of the amount due under that decree—the repeal of that section not affecting a decree previously passed under it, and the right to enforce such a decree continuing until satisfaction has been obtained. CALCUTTA TRADES ASSOCIATION *v.* RYLAND.

[24 Calc. 102

(2) ATTACHMENT BEFORE JUDGMENT.

5.—*Suit against one member of undivided Hindu family—Death of defendant before decree—Right of survivorship.*] Where, in a suit against one member of an undivided Hindu family, not as representing the family, there is an attachment before judgment of family property, and the defendant dies before decree is passed, the right of survivorship takes effect before that attachment becomes effectual for the purpose of execution. Principle of decision in *Sadayappa* v. *Ponnama*, I. L. R. 8 Mad. 554, followed. RAMANAYYA *v.* RANGAPPAYYA.

[17 Mad. 144

6.—*Civil Procedure Code* (1882), *s.* 483—*Suit on hypothecation-bond—Attachment of non-hypothecated immoveable property—Sale not necessary to satisfy Court that hypothecated property may prove insufficient.*] Section 483 of the Code of Civil Procedure does not refer exclusively to moveable property. Where in a suit

ATTACHMENT—*continued.*

(2) ATTACHMENT BEFORE JUDGMENT—*continued.*

on an hypothecation-bond the plaintiff sought to attach before judgment immoveable property of the defendant other than that hypothecated:—*Held*, that it was not necessary, in order that the Court might be satisfied that the proceeds of the sale of the hypothecated property were likely to prove insufficient to meet the decree which the plaintiff might obtain in his suit, that such property should be actually brought to sale. BISHAMBAR SAHI *v.* SUKHDEVI.

[16 All. 186

7.—*Civil Procedure Code* (1882), *ss.* 483 *and* 484—*Attachment of money deposited in Court.*] The term "property" as used in ss. 483 and 484 of the Code of Civil Procedure is wide enough to include property of every description, moveable and immoveable, whether in the actual possession of the defendant or of some other person on his behalf; and the words "the Court may require him . . . to produce and place at the disposal of the Court" only refer to such property as is capable of being produced in Court. Where property ordered to be attached is deposited in the Court which made the order for attachment, that order is sufficient notice to itself that the property ordered to be attached is to be held subject to the further orders of the Court, and it is not necessary that a separate formal notice should be drawn up. CHEDI LAL *v.* KUARJI DICHIT.

[17 All. 82

8.—*Winding up Company—Suit against manager of Company—Company not a party to the suit—Attachment before judgment of company's property—Remedy of liquidator—Appeal—Civil Procedure Code* (1882), *ss.* 283, 485, 487, 588 *and* 622.] The Dhulia Manufacturing Company, Limited, carried on business at Dhulia and had its registered office at Bombay. One *M* was the manager at Dhulia, and he had authority to borrow money and draw *hundis* on behalf of the company. In August, 1894, the directors opened negotiations for the sale of the company's factory to one *H*, and in September, 1894, while the negotiations were pending, a special resolution was passed to wind up the company voluntarily. The resolution was confirmed in October, 1894, and *A* was appointed liquidator under s. 177 of the Indian Companies Act (VI of 1882). In December, 1894, the liquidator agreed to sell the factory to *H* for the said sum of Rs. 38,000. Under the agreement *H* was to enter into possession of the factory, but the company was to have a lien upon it until the completion of the purchase, which was to take place in May, 1895. A month before the date fixed for the completion of the sale the plaintiff filed a suit in the Court of the First Class Subordinate Judge of Dhulia against *M*, the manager of the company, in his individual capacity and as manager of the company. His claim was professedly against the company, but he did not make the company, which was then in liquidation, a party to the suit. Subsequently the plaintiff applied for and obtained an order

ATTACHMENT—*continued.*

(2) ATTACHMENT BEFORE JUDGMENT—*concluded.*

for attachment before judgment of the company's factory at Dhulia. No notice of the application or of the order made on it was given to the liquidator. He at once applied to the Court to raise the attachment, contending that the Court had no power to attach the property of the company which was not a party to the suit. The Court made the company a party and dismissed the liquidator's application, confirming its previous order for attachment. The liquidator appealed to the High Court:—*Held*, that the order of attachment should be reversed. The intended sale by the liquidator, which was the sole reason for making the order, was not with intent to obstruct any decree that the plaintiff might obtain against the company, but was being effected by the liquidator in the course of his duty and in pursuance of a contract entered into long before the suit was instituted. The plaintiff's claim, if established, would be satisfied *pari passu* with the other debts of the company. The plaintiff was not entitled to security for his claim in preference to the other creditors. It was contended that no appeal lay against the order of the Subordinate Judge, and that the liquidator's sole remedy was by suit under ss. 283 and 487 of the Civil Procedure Code (Act XIV of 1882):—*Held*, that the company having been made a party to the suit, the order of attachment was made under s. 485 of the Civil Procedure Code, and consequently under s. 588 an appeal lay from that order. If the company had not been made a party, the High Court would have set aside the order of attachment under s. 622 of the Code, as in that case the Subordinate Judge would have had no jurisdiction to make it. MIR ALI MAHOMED PATEL *v.* BIHARILAL SUKLAL.

[21 Bom. 273

(3) ATTACHMENT OF PERSON.

9.—*Civil Procedure Code* (1882), *ss.* 341 *and* 642 *—Execution of decree—Arrest of pleader while acting in his professional capacity—Discharge—Re-arrest.*] Under s. 341 of the Code of Civil Procedure the immunity of a judgment-debtor from a second arrest depends, not only upon his having been arrested, but upon his having been imprisoned under the arrest. RAJENDRO NARAIN ROY *v.* CHUNDER MOHUN MISSER.

[23 Calc. 128

(4) MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

10.—*Civil Procedure Code* (1882) *ss.* 268 *and* 274 *—Attachment of mortgage-debt—Sale under irregular attachment—Suit by purchaser on mortgage.*] The plaintiff sued to recover principal and interest due on a mortgage. He claimed title as purchaser at a court-sale held in execution of a decree against the mortgagee. It appeared that there had been no attachment under Civil Procedure Code, s. 274, but under s. 268 only:—*Held*, that the purchase by the plaintiff was not invalid by reason of the last-mentioned

ATTACHMENT—*continued.*

(4) MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—*concluded.*

circumstance, and that the plaintiff was entitled to recover as against the property. *Debendra Kumar Mandel* v. *Rup Lall Dass*, I. L. R. 12 Calc. 546; and *Kasinath Das* v. *Sadasiv Patnaick*, I. L. R. 20 Calc. 805, referred. MUNIAPPA NAIK *v.* SUBRAMANIA AYYAN.

[18 Mad. 437

11.—*Sale of mortgage-debt in execution of a decree against mortgagee—Sale carrying with it security without attaching mortgaged property—Civil Procedure Code* (1882), *s.* 374.] The sale of a mortgage-debt described as such in execution of a decree carries with it the security without attaching the mortgaged property under s. 274 of the Civil Procedure Code. *Debendra Kumar Mandel* v. *Rup Lall Dass*, I. L. R. 12 Calc. 546; and *Appasami* v. *Scott*, I. L. R. 9 Mad. 5 (p. 7, *per* TURNER, J.) followed. BALDEV DHANRUP MARVADI *v.* RAMCHANDRA BALVANT KULKARNI.

[19 Bom. 121

12.—*Sale in execution held in pursuance of an attachment irregularly made—Civil Procedure Code, ss.* 268 *and* 274*—Rights of auction-purchaser.*] *Held* that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction-purchaser, even though the attachment subsequent to which such sale was held might have been made under a wrong section of the Code of Civil Procedure. *Balkrishna* v. *Masuma Bibi*, I. L. R. 5 All. 142; L. R. 9 I. A. 182; *Mahadeo Dubey* v. *Bhola Nath Dichit*, I. L. R. 5 All. 86; *Ram Chand* v. *Pitam Mal*, I. L. R. 10 All. 506; and *Karim-un-nisa* v. *Phul Chand*, I. L. R. 15 All. 134, referred to. SHEO CHARAN LAL *v.* SHEO SEWAK SINGH.

[18 All. 469

13.—*Attachment of equity of redemption—Civil Procedure Code* (1882), *ss.* 266 *and* 274*—Transfer of Property Act* (*IV of* 1882), *s.* 60.] The equity of redemption of the mortgagor is immoveable property, and is, as such, liable to be attached and sold in execution of a decree under s. 266 of the Civil Procedure Code (Act XIV of 1882). Its attachment can be effected under s. 274 of the Code by an order prohibiting the judgment-debtor from dealing with it in any way and all persons from receiving it, such order being proclaimed and notified as therein directed. PARASHRAM HARLAL *v.* GOVIND GANESH PORGAUMKAR.

[21 Bom. 226

14.—*Attachment of money in hands of Receiver—Attachment made without sanction of Court—Civil Procedure Code* (1882), *s.* 272.] An attachment of money in the hands of the Receiver made without previous permission or sanction of the Court for such attachment is improper and irregular, and the Court will refuse to recognize it. *Kahn* v. *Alli Mahomed Haji Umer*, I. L. R. 16 Bom. 577, followed. MAHOMMED ZOHURUDDEEN *v.* MAHOMMED NOOROODDEEN.

[21 Calc. 85

ATTACHMENT—*continued.*

(5) PRIORITY OF ATTACHMENT.

15.—*Question of priority of attachment—Attachment under decree of High Court of property already attached under decree of Small Cause Court—Claim to attached property, by what Court to be decided—Civil Procedure Code* (1882), *s.* 272.] In execution of a decree obtained in the High Court the plaintiffs, on the 22nd of March, 1895, attached certain property of the defendant, which, however, had been already attached on the 22nd of February, 1895, by one *R*, who had obtained a decree against defendant in the Court of Small Causes. The plaintiff's attachment was therefore effected under s. 272 of the Civil Procedure Code (Act XIV of 1882) by a notice addressed by the Prothonotary of the High Court to the Registrar of the Small Cause Court. The claimant was mortgagee in possession, and the defendants were his tenants. On the 26th February he had lodged a claim in the Small Cause Court to the said property as mortgagee in possession, and on the 25th March, 1895, a consent order was passed by the Chief Judge of that Court directing that *R's* attachment should stand subject to the claimant's claim. On the 22nd April, 1895, the claimant applied to the Chief Judge of the Small Cause Court to issue a notice to the plaintiffs in this suit, under s. 272 of the Civil Procedure Code, to determine the question of priority of claim to the attached property between him and the plaintiffs. His application was refused, the Chief Judge being of opinion that he could not interfere in a High Court suit. The claimant then filed his claim in the High Court, and took out this summons to remove the plaintiffs' attachment:—*Held*, that under s. 272 of the Civil Procedure Code, the Small Cause Court was the only Court to decide the question of priority between the claimant and the plaintiffs. JEYNARAYRAN MEGHRAJ *v.* ISMAIL KURIMALI.

[19 Bom. 710

(6) ALIENATION DURING ATTACHMENT.

16.—*Civil Procedure Code* (1882), *s.* 273—*Dismissal of an application for execution—Attachment of a decree—Execution of attached decree.*] The holder of a decree dated 1885 applied to execute it, but his application was dismissed in March 1887 on the ground that "no further steps had been taken." It did not appear that any notice was given to him before the order of dismissal was made. Nevertheless the decree-holder proceeded to execute a decree of the judgment-debtor attached by him and brought to sale certain property which was in question in the present suit, and it was purchased *bonâ fide* by the present defendant who obtained a sale certificate from the Court. The present plaintiff claimed as assignee from the holder of the attached decree to execute it against the same land, and now sued for a declaration that it was liable to be brought to sale by him and that the defendant's purchase was void as against him:—*Held* (1) that under the circumstances of the case the attachment in execution of the decree of 1885

ATTACHMENT—*continued.*

(6) ALIENATION DURING ATTACHMENT—*continued.*

was subsisting at the time of the purchase by the defendant; (2) that a judgment-creditor who attaches a decree is competent to execute it. RANGASAMI CHETTI *v.* PERIASAMI MUDALI.

[17 Mad. 58

17.—*Termination of attachment by abandonment.*] The plaintiff had an attachment against certain property. Owing to his not filing a necessary affidavit, the execution petition was struck off. Subsequently he applied for the sale of the property, and the Court directed a fresh attachment to issue. It was held that these facts did not amount to an abandonment of the first attachment by the plaintiff. SRINIVASA SASTRIAL *v.* SAMI RAU.

[17 Mad. 180

18.—*Assignment of decree—Second attachment by assignee—Presumption as to cessation of prior attachment.*] If at the date of the assignment of a decree the judgment-debtor's property is already under attachment, in execution of such decree, it is not necessary for the assignee of the decree to apply for a fresh attachment. When either the decree-holder or his assignee applies to have attachment under the decree of property which has been previously attached under the decree, it lies upon the decree-holder or the assignee of the decree as the case may be, if the question is raised, to show that the second application was unnecessary by reason of the first attachment being still subsisting. Failing such evidence, a Court may presume that the prior attachment had ceased before the application for a second attachment was made. *Puddomonee Dossee* v. *Muthoora Nath Chowdhry*, 12 B. L. R. 411, referred to. HAFIZ SULEMAN *v.* ABDULLAH.

[16 All. 133

19.—*Circumstances showing expiry of attachment.*] An attachment, which had, at one time, prohibited alienation of the property, and on which the plaintiffs relied as having rendered the mortgage invalid, was held under the circumstances to have been no longer in operation at the time when the mortgage was executed, and the mortgage was upheld. MAHOMED MOZUFFER HOSSEIN *v.* KISHORI MOHUN ROY.

[22 Calc. 909

[L. R. 22 I. A. 129

20.—*Order releasing property from attachment—Subsequent decree establishing attaching creditor's right to attached property—Mortgage o attached property between release and subsequent decree—Code of Civil Procedure* (1882), *ss.* 276 280 *and* 283.] A decree-holder attached the property of certain of the defendants, who then obtained an order of release under s. 280 of the Code of Civil Procedure, and subsequently mortgaged the property. The attaching creditor thereupon sued for, and obtained under s. 283 of the Code, a declaration that the mortgaged property was nevertheless liable to be sold under this attach-

ATTACHMENT—*concluded.*

(6) ALIENATION DURING ATTACHMENT—*concluded.*

ment. A few days after obtaining such decree, he again attached the judgment-debtor's property. The mortgagees then sued on their mortgage and obtained a decree for sale. The sale in execution of the attaching creditor's decree and that ordered by the decree in favour of the mortgagees were both advertised for the same day. The plaintiff purchased at the sale under the attaching creditor's decree, and then sued for a declaration that the property was not liable to be sold in execution of the mortgage-decree, on the ground that the judgment-creditor's attachment was restored by the decree under s. 283 of the Code, and that the mortgage executed by the judgment-debtors was invalid as against the plaintiff, the purchaser at the execution-sale:—*Held* (affirming the decisions of the Subordinate Judge and the District Judge), that the plaintiff was entitled to the decree sought. *Mahommed Warris* v. *Pitambur Sein*, 21 W. R. 435, applied. BONOMALI RAI *v.* PROSUNNO NARAIN CHOWDHRY.

[23 Calc. 829

21.—*Civil Procedure Code* (1882), *s.* 276—*Lease of property under attachment.*] *Held* that a *zar-i-peshgi* lease and an ordinary agricultural lease made by a judgment-debtor of property under attachment were alienations which were void by reason of the prohibition contained in s. 276 of the Code of Civil Procedure. DEBI PRASAD *v.* BALDEO.

[18 All. 123

(7) STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT.

22.—*Effect upon maintenance of attachment of order dismissing application for execution.*] Where property has once been attached in execution of a decree, an order merely dismissing an application for execution, which order does not contain specific words withdrawing the attachment, and which is not an order declaring the decree incapable of execution, will not have the effect of raising the attachment; and if in appeal such order is set aside, the decree-holder will be in the same position as he was before and entitled to the full benefit of the attachment. *Gunga Rai* v. *Sakeena Begum*, 5 N. W. 72; *Nadir Hossein* v. *Pearoo Thorildarinee*, 14 B. L. R. 425; and *Golam Yaheya* v. *Sham Soonduree Kooeree*, 12 W. R. 142, referred to. BANK OF UPPER INDIA *v.* SHEO PRASAD.

[19 All. 482

ATTEMPT TO COMMIT OFFENCE.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

[17 All. 120, 123

Penal Code (*Act XLV* of 1860), *ss.* 467 *and* 511—*Forgery—Facts necessary to constitute an attempt—Abetment.*] One *C*, calling himself *K*, the son of *B*, went to a stamp vendor, accompanied by a man named *K S*, and purchased from him, in the

ATTEMPT TO COMMIT OFFENCE—*concluded.*

name of *K*, a stamp paper of the value of 4 annas. The two men then went to a petition-writer, and *C* again giving his name as *K*, they asked the petition-writer to write for them a bond for Rs. 50 payable by *K* to *K S*. The petition-writer commenced to write the bond, but, his suspicions being aroused, did not finish it, but took *C* and *K S* to the nearest *thana*:—*Held* that, under the above circumstances, *K S* was rightly convicted of an attempt to commit the offence defined in s. 467 of the Penal Code, and *C* of abetment of the said attempt. *Queen* v. *Ram Sarun Chowbey*, 4 N. W. 46, referred to. QUEEN-EMPRESS *v.* KALYAN SINGH.

[16 All. 409

ATTESTATION.

See STAMP ACT, S. 3, CL. 4.

[22 Calc. 757

——, Want of.

See EVIDENCE ACT, S. 68.

[18 Mad. 29

ATTORNEY.

——, Improper conduct of.

See RECEIVER.

[22 Calc. 648

——, Lien of, for costs.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[21 Calc. 85

—Practice as to non-publication of name when charges are brought against an attorney.] The practice which prevails in England as regards the non-publication of the name of an attorney, against whom a rule has been obtained, approved of and followed. IN THE MATTER OF AN ATTORNEY.

[23 Calc. 576

ATTORNEY AND CLIENT.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[21 Calc. 85

See COSTS—TAXATION OF COSTS.

[18 Bom. 189

[20 Bom. 301

See LIMITATION ACT, ART. 84.

[22 Calc. 943, 952 note

See PRIVILEGED COMMUNICATION.

[18 Bom. 263

ATTORNMENT, NOTICE OF.

See REGISTRATION ACT, S. 49.

[19 Bom. 36

AUCTION-SALE.

——, Agreement not to bid against one another at.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[18 Bom. 342

AUDITOR.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[18 All. 12

AUTREFOIS CONVICT.

See ACT XIII OF 1859.

[21 Calc. 262

AWARD.

See APPEAL—ARBITRATION.

[18 All. 414, 422
[18 Mad. 423
[24 Calc. 469

See CASES UNDER ARBITRATION—AWARDS.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[20 Calc. 304

See LAND ACQUISITION ACT, 1894, s. 54.

[23 Calc. 523

——, Decree on.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[21 Bom. 465

——, Effect of.

See HINDU LAW, JOINT FAMILY—POSITION AND POWER OF MANAGER.

[16 All. 231

See JURISDICTION—TESTAMENTARY JURISDICTION.

[20 Bom. 238
[21 Bom. 335

See RES JUDICATA—ADJUDICATIONS.

[19 Mad. 290

——, Objection to.

See ARBITRATION—PRIVATE ARBITRATION.

[21 Calc. 213
[16 Mad. 231
[17 All. 21
[20 Bom. 596
[20 Mad. 89

——, Suit to enforce.

See LIMITATION ACT, ART. 113.

[16 All. 3

——, Validity of.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—ACT XX OF 1863.

[19 Mad. 498

BAD FAITH, ACT OF.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[17 All. 218

BAILEES.

See RAILWAY COMPANY.

[17 Mad. 445

BANDHUS.

See HINDU LAW—INHERITANCE—GENERAL HEIRS—BANDHUS.

[18 Mad. 193
[19 Bom. 631
[19 Mad. 405
[L. R. 23 I. A. 83

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSINS.

[22 Calc. 339
[17 All. 528

BANKER AND CUSTOMER.

See LIMITATION ACT, ART. 60.

[18 Mad. 390

BANKERS.

1.—*Lien of banker—Contract Act (IX of 1872), s. 171—Deposit of security with bank to secure debts due to bank.*] The plaintiff deposited certain jewels with the defendant bank to secure certain debts. Afterwards he paid the secured debts and demanded the return of the jewels being then otherwise indebted to the bank:—*Held*, that the plaintiff was not entitled to recover the jewels without discharging the other debts, unless he proved that the defendant had agreed to give up its general lien. KUNHAN MAYAN *v.* BANK OF MADRAS.

[19 Mad. 234

2.—*Banking company registered under Companies Act (VI of 1882)—Criminal breach of trust by banker—Payment of dividends dishonestly out of deposits—Directors—Manager and accountant—Person entrusted with property or with dominion over property—Agent—Penal Code (Act XLV of 1860), ss. 109, 191, 409 and 418—Cheating—Making false balance-sheet—Companies Act (V of 1882), s. 215—Criminal Procedure Code (Act X of 1882), s. 239.*] When a bank takes a deposit from its customer, it takes it on the understanding that that deposit is not to be used to pay dividends to shareholders at a time when the bank is insolvent and cannot legally pay dividends In the case of a bank registered under the Indian Companies Act as a company limited by shares, and governed by the regulations contained in Table A in the first schedule to the Act, it was *held* that the directors had dominion over the property and the management of the funds of the bank; that they were bound not to pay dividends except out of the profits of the bank; and that if they dishonestly, that is, knowingly and intentionally, paid dividends to the shareholders out of deposits when there were no profits, intending to cause gain to themselves or others to which they were not entitled, or to cause wrongful loss to other persons, they were guilty of criminal breach of trust as bankers under s. 409 of the

BANKERS—*concluded.*

Penal Code: but that the manager and the accountant or assistant manager were not, within the meaning of the section, persons who were entrusted with property or with dominion over property as bankers or agents, and therefore did not come directly under s. 409, though they might be guilty of abetment under s. 409 read with s. 109, by conspiring with the directors to commit criminal breach of trust if they assisted the directors to obtain the sanction of the shareholders to the illegal payment of dividends, and did so for the dishonest purpose of causing wrongful gain or wrongful loss. Whether the illegal payment of dividends under the circumstances stated could be regarded as causing wrongful loss to the bank as a corporate body, *quære*. Whether moneys deposited in the bank by its customers and not in any way ear-marked could, after such deposit, be regarded as "property" of the depositors within the meaning of s. 409, *quære*:—*Held*, also, that if the directors, manager and accountant dishonestly, that is, to obtain wrongful gain for themselves or to cause wrongful loss to others, put before the shareholders balance-sheets which they knew to be materially false and misleading and likely to mislead the public as to the condition of the bank, and concealed its true condition, and thereby induced depositors to allow their money to remain in deposit in the bank, they were guilty of cheating in the aggravated form made punishable by s. 418 of the Penal Code; and if they acted together to put forward such a false balance-sheet, they were guilty of abetment by conspiracy to cheat. *Semble*—The making of such a false balance-sheet is not an offence within s. 191 of the Penal Code, and, where it is made prior to the commencement of the winding up of the company, is not an offence within s. 215 of the Companies Act (VI of 1882). A balance-sheet of a company under the Indian Companies Act must be a true balance sheet, in the sense that it must represent the actual state of the company's assets and liabilities. If it falsely states the condition of the company, it is a false balance-sheet, though it follows the accounts as shown in the books of the company, and correctly represents what is in the books. A balance-sheet which showed all the debts owing to the company, amounting to Rs. 28 lakhs, under the head of assets, without specifying in accordance with the form of balance-sheet annexed to Table A, which of such debts were good and secured, which good and unsecured, and which considered bad and doubtful, and also showed a divisible balance of profits amounting to Rs. 19,000, the facts being that out of the Rs. 28 lakhs some Rs. 13 lakhs were bad and irrecoverable, and that the capital, reserve fund, and other provision for bad debts had been lost, and that the company instead of making profits was, and long had been, insolvent, was found to be false and misleading. Having regard to the nature of the charges above referred to, the Court under s. 239 of the Code of Criminal Procedure rejected an application by the defence that the accused should be tried separately. QUEEN-EMPRESS *v.* MOSS.

[16 All. 88

BARRISTER, RECEIPT FOR FEES OF.

See STAMP ACT, SCH. II, ART. 15.

[16 All. 132

BASTI LAND.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 2.

[21 Calc. 528

BENAMIDAR.

See BENGAL TENANCY ACT, S. 173.

[21 Calc. 554

See PARTIES—PARTIES TO SUITS—BENAMIDARS.

[18 All. 69

[24 Calc. 34, 644

See RES JUDICATA—MATTERS IN ISSUE.

[24 Calc. 711

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 707

BENAMI TRANSACTION.

Col.

1. General Cases 84
2. Certified Purchasers 86

See MAHOMEDAN LAW—GIFT.

[19 All. 267

[L. R. 24 I. A. 1

——, Purchase without notice of.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[22 Calc. 909

[L. R. 22 I. A. 129

(1) GENERAL CASES.

1.—*Madras Revenue Recovery Act (Madras Act II of 1864), s. 38—Madras Revenue Recovery Amendment Act (Madras Act III of 1884), s. 1 (5)—Sale for arrears of revenue—Benami purchaser—Suit by benamidar to eject tenants—Right of suit.*] Land forming part of the endowment of a *chattram* was brought to sale for arrears of revenue and was purchased by the plaintiffs who now sued to eject the tenants who were in occupation of the land:—*Held* (1) that the defendants were entitled to plead that the plaintiffs had purchased *benami* from the managers of the *chattram*; (2) that the above plea having been substantiated the plaintiffs were not entitled to maintain the suit. TIRUMALAYPPA PILLAI *v.* SWAMI NAIKAR.

[18 Mad. 469

2.—*Benami deed executed with intention to defraud creditor—Relief against fraudulent benami deeds executed by predecessor in title.*] *K* executed in 1850 four *benami* documents with intent to defeat the claim of his employer on account of money embezzled by him: two of the documents were *hibas* (deeds of gift) in favour of *P*, his elder wife, in respect of a moiety of properties 1, 2 and

BENAMI TRANSACTION—*continued.*

(1) GENERAL CASES—*continued.*

3; and two were *kobalas* (conveyances) in favour of *G*, that wife's brother, in respect of the other moiety of those properties. *K* remained in possession of the properties till his death in 1860. After his death *P* remained in possession of the properties 1, 2, and 3, and *S*, the younger widow, remained in possession of other properties. In November *P* executed, in respect of the 8 annas of the properties covered by the *hibas*, a *kobala* in favour of *G's* son, then a minor. *S* died in 1868, and *P* died in 1871. A daughter of *K* by *S* succeeded them, and that daughter died in August, 1882. In a suit brought by a son of that daughter on 4th January, 1893, for the recovery (*inter alia*) of possession of his share of properties 1, 2, and 3 from *G's* son, with mesne profits, and for a declaration that the deeds executed by *K* were colourable transactions, and that the *kobala* executed by *P* was not valid and binding:—*Held*, as to the contention that plaintiff was not entitled to be relieved against the consequences of the fraud of his predecessors in title, that the balance of authority is decidedly in favour of the proposition that it is always open to a party to show that a document simply executed but not carried into effect is a *benami* and colourable document, and to recover possession of property against the party claiming under such document. *Symes* v. *Hughes*, L. R. 9 Eq. 475; *Phool Bibee* v. *Goor Surun Doss*, 18 W. R. 485; *Sreenath Roy* v. *Bindoo Bashinee Debia*, 20 W. R. 112; *Debia Chowdhrain* v. *Bimola Soonduree Debia*, 21 W. R. 422; *Bykunt Nath Sen* v. *Goboollah Sikdar*, 24 W. R. 391; *Mukun Mullick* v. *Bamjan Sardar*, 9 C. L. R. 64, referred to. *Kalynath Kur* v. *Doyal Kristo Deb*, 13 W. R. 87, not followed. *Rangammal* v. *Venkatachari*, I. L. R. 18 Mad. 378; and *Chenvirappa bin Virbhadrappa* v. *Puttappa bin Shivbasappa*, I. L. R. 11 Bom. 708, distinguished. *Taylor* v. *Bowers*, L. R. 1 Q. B. D. 291, followed. *Kearley* v. *Thomson*, L. R. 24 Q. B. D. 742, referred to. SHAM LALL MITRA *v.* AMARENDRO NATH BOSE.

[23 Calc. 460

3.—*Colourable conveyance in fraud of creditors—Fraud carried into effect—Suit by real owner against benamidar and his trasnferee—Right of suit.*] Plaintiff, with the object of defeating the claims of his creditors, executed a colourable conveyance of his property in favour of another person, and the transferee successfully resisted the creditors of the plaintiff from seizing the property in execution of their decrees. The transferee then conveyed the property to a third party who took possession:—*Held*, following the case of *Kali Charan Pal* v. *Rasik Lal Pal*, I. L. R. 23 Calc. 962 (note), that the plaintiff was precluded from maintaining an action for the recovery of the property:—*Held*, also, that there is a distinction between those cases in which the fraud was only attempted, and those in which it was actually carried into effect; and that in the latter class of cases the Court would, by granting relief to the wrong-doer, be making itself a party to the fraud. GOBERDHAN SINGH *v.* RITU ROY.

[[23 Calc. 962

BENAMI TRANSACTION—*concluded.*

(1) GENERAL CASES—*concluded.*

4.—*Colourable conveyance in fraud of creditors—Fraud carried into effect—Suit by the real owners against benamidar—Right of suit.*] Where property has been conveyed *benami* with the object of placing it beyond the reach of creditors, and the fraudulent purpose has been carried into effect, the real owner ought not to be permitted to succeed in a suit instituted by him for recovery of the property. A distinction exists between such a case and a case where the fraud has not been carried into execution. *Debia Chowdhrain* v. *Bemola Soonduree Debia*, 21 W. R 422, explained. KALI CHARAN PAL *v.* RASIK LAL PAL.

[23 Calc. 962 note

5.—*Covenant by a benamidar—Covenant for quiet enjoyment—Vendor and purchaser—Suit for purchase-money.*] Land forming part of a zemindari was brought to sale in execution of a decree and was purchased by *A* (*benami*) for the zemindarni. After the zemindarni's death *B*, her son and supposed heir, together with *A*, sold the land under a conveyance, which contained a joint covenant to remove any hindrance in the vendee's enjoyment of the land. Persons claiming under the lawful successor of the deceased zemindarni obtained an ejectment decree against the representatives of the vendee, then deceased, and they were permitted to retain possession only on a payment made to the decree-holders. They now sued *A* and *B* for the amount of the purchase-money paid on the conveyance and the costs incurred in the ejectment suit:—*Held*, that the plaintiffs were entitled to the decree sought by them against *A*, notwithstanding that he was a *benamidar* merely. SOMASUNDARAM AYYAR *v.* FISCHER.

[19 Mad. 60

(2) CERTIFIED PURCHASERS.

6.—*Act XI of* 1859, *s.* 36—*Suit to oust certified purchaser.*] *A* purchased a *mehal* in the name of *B's* brother and obtained possession. He then sued *B*, who was acting as his *tehsildar*, for an account and for delivery of certain papers connected with that *mehal*:—*Held*, that the terms of s. 36 of Act XI of 1859 did not apply to bar the suit. BRINDABUN CHUNDER NUNDI *v.* RAM SUNDER MOZUMDAR.

[21 Calc. 375

7.—*Civil Procedure Code* (1882), *s.* 317—*Suit by execution-creditor for declaration that property is liable to be sold in execution of decree as belonging to his debtor.*] The plaintiff lent money to *F* on a bond, and after his death sued his representative to recover the money out of the deceased's assets, and obtained a decree, in execution of which he attached certain property. *S* preferred a claim to the property on the ground that she was the purchaser of it at an execution-sale, and it was released. The plaintiff then brought a suit against *S* and *F's* representative for a declaration that the property was the property of his debtor *F*, and was therefore liable to be sold in execution of his decree:—*Held*, that the suit was not bar-

BENAMI TRANSACTION—*continued.*

(2) CERTIFIED PURCHASERS—*continued.*

red by s. 317 of the Civil Procedure Code. *Kanizak Sukina* v. *Monohur Das*, I. L. R. 12 Calc. 204; *Seetanath Ghose* v. *Madhub Narain Roy Chowdhry*, 1 W. R. 329; *Khyrat Ali* v. *Syfulluh Khan*, 8 W. R. 130; *Sohun Lall* v. *Lala Gya Pershad*, 6 N. W. 265; and *Puran Maj* v. *Ali Khan*, I. L. R. 1 All. 235, followed; *Rama Kurup* v. *Sridevi*, I. L. R. 16 Mad. 290, dissented from. SUBHA BIBI *v.* HARA LAL DAS.

[21 Calc. 519

8.—*Civil Procedure Code* (1882), *s.* 317—*Effect of benami purchase, and purchase as execution-debtor's agent—Right of suit for possession.*] Where the purchaser at an execution-sale is the agent of the execution-debtor and buys the property as such, though he advances the purchase-money on the understanding that he is to be repaid, a suit for possession of the property is maintainable by the latter against the former. Such a transaction is not a mere *benami* purchase, and is not a bar to such a suit under s. 317 of the Civil Procedure Code. SANKUNNI NAYAR *v.* NARAYANAN NAMBUDRI.

[17 Mad. 282

9.—*Civil Procedure Code* (1882), s. 317—*Sale under mortgage-decree—Benami purchaser—Purchase on account of a subsequent usufructuary mortgagee—Right of suit for possession.*] Certain land was hypothecated to *A* and subsequently put in the possession of *B* under a usufructuary mortgage. *A* obtained a decree upon his hypothecation for the sale of the property against *B* and the mortgagor. In execution the land was purchased by the agent of *B* with his money, and he agreed to execute a conveyance to *B*. This agreement was not carried out, and the nominal purchaser ejected *B's* tenant:—*Held*, the suit was not barred by s. 317 of the Civil Procedure Code, that *B* was entitled to a decree for delivery of possession and execution of a conveyance. KUMBALINGA PILLAI *v.* ARIAPUTRA PADIACHI.

[18 Mad. 436

10.—*Interference by benamidar with tenants of real purchaser — Real purchaser's right to sue benamidar — Civil Procedure Code* (1882), *s.* 317.] At a sale in execution of a decree the plaintiff purchased certain property in the name of the defendant and continued in undisturbed possession of the property for eight years after the sale. He then brought a suit against the defendant for a declaration of his right and for an injunction to restrain him from interfering with it:—*Held*, affirming the decision of the Subordinate Judge, that the suit did not come within the scope of s. 317 of the Civil Procedure Code, but was maintainable. SASTI CHURN NUNDI *v.* AUNOPURNA.

[23 Calc. 699

11.—*Civil Procedure Code* (1882), *s.* 317—*Application for execution of decree against a person alleged to be the beneficial owner, though not the certified purchaser.*] The provisions of s. 317 of the Code of Civil Procedure contemplate suits between the certified purchaser and the beneficial owner

BENAMI TRANSACTION—*concluded.*

(2) CERTIFIED PURCHASERS—*concluded.*

and will not operate so as to bar a third party from asserting that the certified purchaser is not the beneficial owner. *Sohun Lall* v. *Lala Gya Pershad*, 6 N. W. 265; *Puran Mal* v. *Ali Khan*, I. L. R. 1 All. 235; and *Subha Bibi* v. *Hara Lal Das*, I. L. R. 21 Calc. 519, referred to. UNCOVENANTED SERVICE BANK *v.* ABDUL BARI.

[18 All. 461

12.—*Purchase by pleader of client's interest—Duty of pleader — Code of Civil Procedure* (1882), *s.* 317.] At a sale in execution of a decree against the plaintiffs, the pleader who had acted for the plaintiffs purchased their property with his own money, but in the name of his mohurrir, and for a very inadequate sum. The plaintiffs thereupon brought this suit against the defendants (the pleader and his mohurrir) for a declaration that the pleader-defendant, in so purchasing, was a trustee on their behalf; for an order directing the defendants to reconvey the property to the plaintiffs, and for other relief. At the time of filing the suit, possession of the land sold had not been given to anybody:—*Held*, affirming the decision of the Subordinate Judge, that the suit was not barred, having regard to the case made in the plaint, by s. 317 of the Code of Civil Procedure (Act XIV of 1882):—*Held*, also (on the merits), that the pleader could not, according to equity and good conscience, retain for his own benefit the property so purchased by him. AGHORE NATH CHUCKERBUTTY *v.* RAM CHURN CHUCKERBUTTY.

[23 Calc. 805

BENCH OF MAGISTRATES.

1.—*Criminal Procedure Code* (1882), *ss.* 16 *and* 350—*Change in constitution of the Court during a trial—Offence under Madras Towns Nuisances Act (Madras Act III of 1889).*] A trial under the Town Nuisances Act of 1889 was begun before a Bench of Magistrates and adjourned. On the adjourned date the Bench was constituted differently, only one Magistrate being present of those who attended on the first occasion; but the trial was proceeded with and resulted in a conviction:—*Held*, that the conviction was illegal and should be set aside. *Hardwar Singh* v. *Khega Ojha*, I. L. R. 20 Calc. 870, followed. QUEEN-EMPRESS *v.* BASAPPA.

[18 Mad. 394

2.—*Absence of member of Bench—Hearing of part of the case by two Magistrates and decision by three—Criminal Procedure Code* (1882), *s.* 350.] Only those Magistrates who have heard the whole of the evidence can decide a case. There is no provision of law which provides for a change in the constitution of Benches of Magistrates during the hearing of a case. Section 350 of the Criminal Procedure Code does not apply to cases tried by Benches of Magistrates. *Shumbhunath Sarkar* v. *Ram Komul Guha*, 13 C. L. R. 212; and *Hardwar Singh* v. *Khega Ojha*, I. L. R. 20 Calc. 870, followed. DAMRI THAKUR *v.* BHOWANI SAHOO.

[23 Calc. 194

BENGAL ACT, 1868—VII.

——, s. 2.

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[23 Calc. 641

See REVIEW—CIVIL CASES—POWER TO REVIEW.

[22 Calc. 419

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[21 Calc. 70

[L. R. 22 I. A. 165

——, s. 8.

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[21 Calc. 350

——, s. 11.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[21 Calc. 360

——, 1869—II.

See CHOTA NAGPORE TENURES ACT.

——, 1869—VIII, s. 5.

See CONTRACT ACT, s. 74.

[22 Calc. 658

——, 1870—VI.

See VILLAGE CHOWKIDARS ACT.

——, 1875—V.

See BENGAL SURVEY ACT.

——, 1876—IV.

See CALCUTTA MUNICIPAL ACT, 1876.

——, 1876—V.

See BENGAL MUNICIPAL ACT, 1876.

——, 1876—VIII.

See ESTATES PARTITION ACT, 1876.

——, 1878—VII.

See BENGAL EXCISE ACT.

——, 1879—I.

See CHOTA NAGPORE LANDLORD AND TENANT ACT.

——, 1880—VII.

See PUBLIC DEMANDS RECOVERY ACT.

——, 1880—IX.

See BENGAL CESS ACT.

——, 1881—IV.

See BENGAL EXCISE ACT AMENDMENT ACT.

——, 1884—III.

See BENGAL MUNICIPAL ACT, 1884.

——, 1888—II.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888.

BENGAL CESS ACT (BENGAL ACT IX OF 1880).

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[21 Calc. 70

[L. R. 20 I. A. 165

——, s. 47.—*Sale in execution of decree for arrears of cess—Procedure—Purchasers, Rights of*—Although the procedure for the realization of cesses may be the same as the procedure laid down for the realization of rent due upon the tenure, yet it does not necessarily follow that the effect of a sale for cesses should be the same as that of a sale for arrears of rent for which the tenure itself is liable to be sold. *Umachurn Bag* v. *Ajadannissa Bibee*, I. L. R. 12 Calc. 430, followed. Notwithstanding, therefore, that s. 47 of the Cess Act, 1880, provides that "every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest at the rate of twelve and a half per centum per annum in the same manner and under the same penalties as if the same were arrears of rent due to him," the effect of a sale by the Collector in execution of a decree for cesses against some of the owners of a tenure is not to convey to the purchaser the whole tenure, but only the right, title and interest of the particular persons against whom the decree had been obtained. MAHANUND CHUCKERBUTTY *v.* BANI MADHUB CHATTERJEE.

[24 Calc. 27

BENGAL EXCISE ACT (BENGAL ACT VII OF 1878).

——, s. 4 and ss. 40 and 75.—*Bengal Excise Act Amendment Act* (*Bengal Act IV of* 1881), *s.* 3—*Right of search — Gurjat-ganja — Excisable article—Foreign excisable article—Resistance to wrongful search by Police—Penal Code, ss.* 141 *and* 353.] In a case where an Excise Sub-Inspector attempted to search a house for *gurjat-ganja*, a "foreign excisable article," under the Excise Act (Bengal Act VII of 1878), and resistance was offered:—*Held*, that *gurjat-ganja* being a "foreign excisable article" under s. 4 of the Act as amended by Bengal Act IV of 1881, the Excise Officer had no legal authority to enter and search the house under s. 40 of the Act; he had authority only to enter and search for any "excisable article" as defined in s. 4 of the Act: and that no offence either under s. 141 or s. 353 of the Penal Code was committed:—*Held*, also, that s. 75 of the Act does not apply to a "foreign excisable article." JAGARNATH MANDHATA *v.* QUEEN-EMPRESS.

[24 Calc. 324

——, s. 40.

See s. 4.

[24 Calc. 324

——, s. 53.—*Spirituous liquor—Medicinal preparation containing alcohol.*] The term "spirituous liquor" in s. 53 of the Excise Act (Bengal Act VII of 1878) is not intended to include a medicinal preparation merely because it

BENGAL EXCISE ACT (BENGAL ACT VII OF 1878)—*concluded.*

is a liquid substance containing alcohol in its composition. The case would be different if alcohol were manufactured separately for the purpose of being used in the preparation of a medicine. GONESH CHUNDER SIKDAR *v.* QUEEN-EMPRESS.

[24 Calc. 157

———, s. 61.

See CRIMINAL PROCEDURE CODE, S. 403.

[23 Calc. 174

———, s. 75.

See S. 4.

[24 Calc. 324

BENGAL EXCISE ACT AMENDMENT ACT (BENGAL ACT IV of 1881).

———, s. 3.

See BENGAL EXCISE ACT, 1878, S. 4.

[24 Calc. 324

BENGAL MUNICIPAL ACT (BENGAL ACT V OF 1876).

———, s. 313.—*Bye-law—"Ultra vires"—Bengal Municipal Act (Bengal Act III of* 1884), *s.* 2.] Where a Municipality passed a bye-law purporting to be made under the provisions of s. 313 of Bengal Act V of 1876, which was duly sanctioned by the Local Government, to the effect that persons failing to trim trees overhanging tanks which were likely to foul the water with their falling leaves, after service of notice on them to that effect, should be liable to a penalty, and where subsequent to the repeal of that Act by Bengal Act III of 1884 a person was convicted and fined for having disobeyed such bye-law :—*Held*, that the conviction was bad, as the bye-law was not one authorised by the terms of s. 313, and was consequently *ultra vires*, and that s. 2 of Bengal Act III of 1884 could not make valid a bye-law which was originally invalid. BENI MADHUB NAG *v.* MATI LAL DAS.

[21 Calc. 837

BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884).

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

[24 Calc. 107

———, Prosecution under.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[23 Calc. 44

———, s. 2.

See BENGAL MUNICIPAL ACT, 1876, S. 313.

[21 Calc. 837

———, ss. 113 and 116.—*Persons occupying holdings—Liability to assessment—Municipal Commissioners, Power to tax—Assessment to tax.*] The word "liability" in the second paragraph of s. 113 of Bengal Act III of 1884 means liability apart

BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884)—*continued.*

from the question of occupation, and must be taken to refer to the liability to assessment or rather of a person who is the occupier of a holding. The same restricted meaning must be placed upon the word "liability" in s. 116, which section has no application to a dispute as to whether a person assessed to a tax does or does not occupy a holding; and a suit brought to set aside an assessment on the ground that the person assessed does not occupy a holding is not therefore barred by the provisions of s. 116. DWARKA NATH DUTT *v.* ADDYA SUNDARI MITTRA.

[21 Calc. 319

———, s. 133.—*False statement contained in application for license—Municipal Commissioners, Power of, to institute prosecution under Penal Code—Penal Code, ss.* 182, 199, 417 *and* 511—*Revisional power of High Court—Power of High Court to interfere in pending proceedings.*] On the 5th May, 1894, *C* applied in writing under the provisions of s. 133 of Bengal Act III of 1884 to a Municipality for a license to be granted to him in respect of two carriages and six ponies, and filled up and signed the usual statement required by the section. The sum payable in respect of the license was received, and the license asked for by *C* was granted to him, and at the same time the statement was sent to an overseer of the Municipality for verification. On the 7th May the overseer reported that *C* had in his possession eight ponies and one horse. On the 8th May the Chairman of the Municipality passed an order directing *C* to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license. On the 9th May *C* presented a petition asking that the tax on the three animals might be received, and stating that he did not think he was liable to take out a license for them, as they were old and diseased and unfit for work. On the 13th May the Chairman passed an order on this application that he had no power to interfere, as the prosecution of *C* had already been ordered. Meanwhile on the 9th May a paper was sent to the Magistrate headed "List of Municipal Cases under Act III of 1884," in which *C* appeared as charged with an offence under s. 199 of the Penal Code for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." On the 12th May the Deputy Magistrate directed a summons to issue to *C* returnable on the 23rd. On the 18th May the District Magistrate passed an order to the effect that the Municipality could not institute a prosecution under the Penal Code, but that the Deputy Magistrate had power to do so, and that he should consider the provisions of ss. 182 and 417, read with s. 511, of the Penal Code, as applicable to the facts of the case. On the 19th May the summons was issued, and the case was heard on the 23rd and 24th May and 19th June, on which date formal charges under ss. 199, 182 and 417—511 of the Penal Code were framed. Thereafter the hearing proceeded

BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884)—*concluded.*

till the 16th July, when on an application to the High Court the proceedings were stayed, and a rule issued to show cause why they should not be quashed. It was contended at the hearing of the rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction:—*Held*, that the High Court has power to interfere at any stage of a case, and that when it is brought to its notice that a person has been subjected, as in this case, for over two months to the harassment of an illegal prosecution, it is its bounden duty to interfere:—*Held*, further, that it was quite clear that the Municipality had no power to institute the proceedings, and that having regard to the provisions of s. 191 of the Code of Criminal Procedure, it did not appear that the Deputy Magistrate, having no private complainant before him, had power of his own motion to institute them; but that whether he had such power or not, the admitted facts of the case did not in law constitute any of the offences with which *C* was charged, and that the whole proceedings must be quashed. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under s. 133, and no words in the Act constituting the making a false return a penal offence; and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import them. The Municipal Commissioners in such a case have the remedy provided by the Act itself. CHANDI PERSHAD *v.* ABDUR RAHMAN.

[22 Calc. 131

——, **ss. 142 and 146.**—"*Habitually used*," *Meaning of—Liability to pay a fine for non-registration of a cart.*] The accused kept his cart outside the limits of the Chanduria Municipality; but used to bring it within the limits twice a week throughout the year:—*Held*, he could not be said to be "habitually" using the cart within the Municipal limits, and was therefore not liable to pay a fine under s. 146 of the Bengal Municipal Act (Bengal Act III of 1884). LEGAL REMEMBRANCER *v.* SHAMA CHARAN GHOSE.

[23 Calc. 52

BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT.

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—GENERALLY.

[16 All. 344

See VALUATION OF SUIT—APPEALS.

[16 All. 286

——, **s. 13.**

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[22 Calc. 871

BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT—*concluded.*

——, **s. 19.**

See VALUATION OF SUIT—SUITS.

[17 All. 69

——, **s. 21.**

See VALUATION OF SUIT—APPEALS.

[23 Calc. 536

See VALUATION OF SUIT—SUITS.

[17 All. 69

——, **s. 22.**

See SUBORDINATE JUDGE, JURISDICTION OF.

[16 All. 363

——, **s. 37.**

See VENDOR AND PURCHASER—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER.

[24 Calc. 897

BENGAL REGULATION, 1793—VIII.

——, **s. 5.**

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE.

[22 Calc. 214
[L. R. 21 I. A. 131

——, **s. 50.**

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE.

[22 Calc. 214
[L. R. 21 I. A. 131

——, **ss. 54 and 55.**

See CESS.

[22 Calc. 680

——, **1806—XVII, s. 8.**

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

[16 All. 59

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE.

[16 All. 59
[23 Calc. 228
[L. R. 22 I. A. 183

——, **1810—XIX.**

See ENDOWMENT.

[18 All. 227

——, **1814—XXVII, ss. 13 and 21.**

See PLEADER—APPOINTMENT AND APPEARANCE.

[16 All. 240

——, **1814—XXIX, s. 2.**

See GHATWALI TENURE.

[22 Calc. 156

BENGAL REGULATION—*concluded.*

——— 1817—XII, s. 16.

See EVIDENCE ACT, s. 35.

[23 Calc. 366

———, 1819—VIII.

See BENGAL TENANCY ACT, SCH. III, ART. 2.

[23 Calc. 191

———. s. 11.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[21 Calc. 702

———, 1825—XI, s. 4.

See ACCRETION.

[19 All. 238

See LANDLORD AND TENANT—ACCRETION TO TENURE.

[21 Calc. 233

BENGAL SURVEY ACT (BENGAL ACT V OF 1875).

———, s. 40.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 935

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[21 Calc. 935

BENGAL TENANCY ACT (VIII of 1885).

———, *s. 3.*

See CESS.

[22 Calc. 680

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TAX.

[22 Calc. 680

———, s. 5, cl. 2.—*Ryot, Definition of—Person taking land for horticultural purposes.*] *Semble*—The definition of "ryot" in the Bengal Tenancy Act (VIII of 1885) is not exhaustive, and there is nothing in that definition which would exclude a person who had taken land for horticultural purposes. HURRY RAM *v.* NURSINGH LAL.

[21 Calc. 129

———, s. 5, cl. 5.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[24 Calc. 272

[L. R. 23 I. A. 158

———, ss. 15 and 16.—*Operation of those sections in a suit for rent of land, to which the plaintiff succeeded before the Bengal Tenancy Act came into force—Construction of statute.*] Sections 15 and 16 of the Bengal Tenancy Act are not retrospective. PROFULLAH CHUNDER BOSE *v.* SAMIRUDDIN MONDUL.

[22 Calc. 337

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

———, s. 16.—*Right of suit—Succession to permanent tenure—Omission to give notice of succession to Collector, Effect of—Non-payment of fees, Effect of, on right to decree.*] Section 16 of the Bengal Tenancy Act does not preclude a party from instituting a suit for rent, notwithstanding that the Collector has not received the notice and the fees referred to therein. But that section is a bar to the plaintiffs obtaining a decree before the notice and the fees are received by the Collector. KALIHUR GHOSE *v.* UMAR PATWARI.

[24 Calc. 241

———, s. 17.

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[21 Calc. 433

———, s. 18.

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[21 Calc. 433

[24 Calc. 152

———, s. 19.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[21 Calc. 129

———, s. 20, cl. 3.—*Right of non-occupancy ryot—Death of ryot having right of non-occupancy—Heirs—Re-entry by landlord.*] The right of a non-occupancy ryot (who does not hold under any express engagement) in his holding is not heritable. KARIM CHOWKIDAR *v.* SUNDAR BEWA.

[24 Calc. 207

———, s. 22.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[21 Calc. 869

[24 Calc. 143, 521

———, s. 23.

See LANDLORD AND TENANT—PROPERTY IN TREES. WOOD, &C.

[22 Calc. 742, 744 note, 746 note, 748 note, 751 note

[23 Calc. 854

———, s. 25.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[24 Calc. 272

[L. R. 23 I. A. 158

———, s. 25, cl. (a).

See LIMITATION ACT, ART. 32.

[24 Calc. 160

———, s. 29.

See CONTRACT ACT, s. 74.

[22 Calc. 658

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——, s. 29.—*Suit for enhancement of rent—Enhancement of rent by contract by more than two annas in the rupee—Void agreement—Contract Act (IX of 1872), ss. 23 and 24.*] A contract under s. 29 of the Bengal Tenancy Act, to pay an enhanced rent by more than two annas in the rupee, is void. KRISTODHONE GHOSE *v.* BROJO GOBINDO ROY.

[24 Calc. 895

——, s. 30, cl. (a).—*Suit for enhancement of rent—Prevailing rate, Meaning of—Average rate.*] The words "prevailing rate," in s. 30, cl. (*a*) of the Bengal Tenancy Act, mean, not the average rate of rent, but the rate actually paid and current in the village for land of a similar description with similar advantages; they should be construed, therefore, in the same sense as was given to the same words in the earlier cases decided under Act X of 1859. SHITAL MONDAL *v.* PROSSONNAMOYI DEBYA.

[21 Calc. 986

——, s. 50.

See EVIDENCE—CIVIL CASES—RENT RECEIPTS.

[24 Calc. 251

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[24 Calc. 152

——, s. 53.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[21 Calc. 383

——, s. 53.—*Established usage of locality.*] The established usage of the locality, and not the usage between the parties, is that contemplated by s. 53 of the Bengal Tenancy Act. *Hira Lal Das* v. *Mothura Mohun Roy*, I. L. R. 15 Calc. 714, followed. WATSON & CO. *v.* SREE KRISTO BHUMICK.

[21 Calc. 132

——, s. 55.

See s. 108.

[21 Calc. 521

——, s. 56, cl. 4, s. 187, cl. 3, and s. 188.—*Joint landlords—Authorised agent—Receipt given by agent—Presumption.*] In a case where there are several joint landlords it is necessary for the Court, before giving effect to a presumption under s. 56, cl. 4 of the Bengal Tenancy Act, to find affirmatively that the agent was authorised by them all, either verbally or in writing. GOPINATH CHAKRAVARTI *v.* UMAKANTA DAS ROY.

[24 Calc. 169

——, s 61.—*Deposit of rent in Court—Bonâ fide doubt of tenant as to who is entitled to rent—Costs where conduct of defendant did not make litigation necessary.*] The deposit of rent in Court under s. 61 of the Bengal Tenancy Act (where the tenant entertains a *bonâ fide* doubt as to who was entitled to receive it) operates as an acquittance; and where such deposit is proved as a defence to a suit for rent, the suit should be dismissed. Where in such a suit the defendant is found to have been not to blame for the litigation, he is entitled to his costs. STALKARTT *v.* GURU DAS KUNDU CHOWDHRY,

[21 Calc. 680

——, s. 65.

See RIGHT OF OCCUPANCY — TRANSFER OF RIGHT.

[24 Calc. 355

See SALE FOR ARREARS OF RENT — INCUMBRANCES.

[22 Calc. 364

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[21 Calc. 169

——, s. 65, s. 3, cl. 5, and s. 161.—*Sale of tenure for arrears of road cess under decree—"Rent"—Road cess—Cesses—Incumbrance by defaulting tenant, Effect of sale in execution of decree for road cess on.*] The word "rent" in s. 65 of the Bengal Tenancy Act, 1885, includes road cess payable by the landlord. A tenure-holder granted a usufructuary mortgage of certain lands within his tenure to *A*, and directed the tenants to pay their rents to him. Subsequently the superior landlord brought a suit for road cess against the tenure-holder, and in execution of his decree sold the tenure under s. 65 of the Bengal Tenancy Act. *A* then brought a suit against one of the tenants for arrears of rent, and contended that all that passed under the auction-sale was the right, title and interest of the tenure-holder, and that his rights under the mortgage were unaffected by the sale, and that he was still entitled to the rent:—*Held* that Chap. XIV of the Bengal Tenancy Act must be read with s. 65 of the Act, and that, having regard to the definition, in cl. 5 of s. 3 "rent," as used in that section, includes road cess payable by the tenant, and that the sale was a sale of the tenure, the purchaser acquiring the property free from the incumbrance created by the tenure-holder in favour of *A*, it not being a registered and notified incumbrance within the meaning of s. 161 of the Act. NOBIN CHAND NUSKAR *v.* BANSENATH PARAMANICK.

[21 Calc. 722

——, s. 67.

See ENHANCEMENT OF RENT — RIGHT TO ENHANCE.

[22 Calc. 214

[L. R. 21 I. A. 131

See INTEREST — MISCELLANEOUS CASES —ARREARS OF RENT.

[24 Calc. 37

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——, ss. 69 and 70.—*Deposit of crops by order of Collector—Suit against depositaries—Right of suit—Privity—Jurisdiction of Civil Court.*] In the course of proceedings held under ss. 69 and 70 of the Bengal Tenancy Act (VIII of 1885), the landlord's (*ticcadar's*) share of the produce was deposited by the Amin, by order of the Collector, with two persons. The depositaries executed and delivered a receipt to the Amin. Some time after, the *ticcadar* made an application to the Collector in order to obtain his share of the produce; but, on a representation being made by one of the depositaries that the crops (with the exception of a small portion) had been destroyed by rain, the Collector declined to grant any relief to the *ticcadar*. The *ticcadar* then brought this suit against the depositaries for recovery of the value of the crops deposited :—*Held*, that the receipt executed and delivered to the Amin established privity between the plaintiff and the defendant so as to enable the former to maintain the suit :—*Held*, also, that the suit was maintainable in the Civil Court. Sections 69 and 70 of the Bengal Tenancy Act refer to and contemplate proceedings between the landlord and the tenant. When a plaintiff seeks relief, not against his tenant, but against a third party, a depositary or bailee, the suit is not barred by anything contained in those sections. JAGA SINGH *v.* CHOOA SINGH.

[22 Calc. 480

——, s. 73.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[24 Calc. 355, 642

——, s. 74.

See CESS.

[22 Calc. 680

——, s. 88.

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[21 Calc. 433

1.—s. 95.—*Manager of estate—Obligation of manager to have his name registered before he can collect rent of estate—Land Registration Act (Bengal Act VII of 1876), s. 78.*] A person who has been appointed manager of an estate under the provisions of s. 95 of the Bengal Tenancy Act must have his name registered under the provisions of s. 78 of the Land Registration Act before he can recover rent from the tenants of the estate of which he has been appointed manager. MAQBUL AHMED CHOWDHRY *v.* GIRISH CHUNDER KUNDU.

[22 Calc. 634

2.—s. 95.—*Appointment of common manager—Consent of parties—Rights of holder of subsequent putni lease of lands formerly under izara.*] A common manager of lands was appointed, under s. 95 of the Bengal Tenancy Act, with the consent of the co-owners. The owner of a 3-anna share of the lands had let out in *izara* his share to the other co-owners. After the expiry of the *izara*, and during the continuance of the management by the common manager, the owner of the 3-anna share granted a *putni* thereof to *A*, who attempted to collect the rents payable to him as *putnidar* :—*Held*, that *A* was bound by the order appointing the common manager, and could not himself collect such rents, as he was in no better position than the shareholder from whom he obtained his *putni*. *Ganoda Kanta Roy* v. *Probhabati Dasi*, I. L. R. 20 Calc. 881, distinguished. JUGGUT CHUNDER CHOWDHRY *v.* GOLACK CHUNDER GHOSE.

[23 Calc. 522

——, ss. 101—115, Chap. X.—*Record of rights—Settlement Officer's decision—Subsequent civil suit—Res judicata.*] A decision by a Settlement Officer under Chap. X of the Bengal Tenancy Act as to which of two persons claiming to be tenant ought to be recorded as such does not operate as *res judicata* in a subsequent civil suit between the same parties concerning the title to the land. PANDIT SARDAR *v.* MEAJAN MIRDHA.

[21 Calc. 378

1.—ss. 102 and 101.—*Power of Settlement Officer—Proceedings in preparation of record of right—Decision as to validity of lakhiraj titles—Power of Revenue Officer to declare land claimed as lakhiraj liable to rent.*] *Held* by the Full Bench (PETHERAM, C. J., and PRINSEP, PIGOT, O'KINEALY and GHOSE, JJ.)—In preparing a record of rights under s. 102 of the Bengal Tenancy Act, a Revenue Officer is not competent to determine the validity of rent-free titles set up by persons occupying lands with the area under inquiry, so as to resume such lands and to declare them liable to settlement of rent. *Gokhul Sahu* v. *Jodu Nundun Roy*, I. L. R. 17 Calc. 721, referred to. SECRETARY OF STATE FOR INDIA *v.* NITYE SINGH; SECRETARY OF STATE FOR INDIA *v.* BAIKUNT NATH PRODHAN; SECRETARY OF STATE FOR INDIA *v.* RAM TARUCK DAS.

[21 Calc. 38

2.—ss. 102 and 101.—*Power of Settlement Officer—Decision of Special Judge—Res judicata—Question whether land is mal or lakhiraj.*] The plaintiff had been proprietor of an estate which was sold for arrears of Government revenue and repurchased from the then purchaser by the plaintiff in 1886. He applied under Chap. X of the Bengal Tenancy Act for the measurement of the estate and the preparation of a record of rights, and the Revenue Officer deputed for these purposes found that a portion of the estate held by the defendant was *mal* land, though it was held as *lakhiraj* under certain *sanads*, and as he also found that no rent had ever been paid for it, it was entered on the record of rights as *mal* land held under those *sanads* as *lakhiraj*. The Special Judge on appeal by the plaintiff *held* that the land having been found to be *mal* should have been entered as *mal* land unassessed with rent. In a suit to have the land assessed with rent, it was found that the *sanads*, under which the defendant claimed to hold, were granted not by

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

any predecessor in title of the plaintiff, and were of a date anterior to the Permanent Settlement:—*Held* (reversing the decision of the lower Appellate Court) that the Special Judge had no jurisdiction to determine whether the land was *mal* or *lakhiraj*, and that his judgment as to its being *mal* did not therefore operate as *res judicata*. *Secretary of State for India* v. *Nitye Singh*, I. L. R. 21 Calc. 38, referred to; *Gokhul Sahu* v. *Jodu Nundun Roy*, I. L. R. 17 Calc. 721, distinguished. The case was remanded for a finding whether the land was *mal* or *lakhiraj*. KARMI KHAN *v.* BROJO NATH DAS,

[22 Calc. 244

——, s. 104, cl. 2.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[23 Calc. 723

See VALUATION OF SUIT—APPEALS.

[23 Calc. 723

——, s. 104, cls. (2) and (3).—*Order of Settlement Officer as to rate of rent—Res judicata —Bengal Tenancy Act, ss.* 105, 106 *and* 107—*Civil Procedure Code* (1882), *s.* 13—*Objection—Dispute.*] Where a Settlement Officer of his own motion settled what appeared to him to be a fair and equitable rent in respect of the lands held by the plaintiffs and other tenants under s. 104, cls. 2 and 3 of the Bengal Tenancy Act, and the plaintiffs preferred an objection under s. 105, cl. 1, to certain entries in the record enhancing their rents, on the ground that their rents were not liable to be enhanced, which objection was disallowed and the record finally published under s. 105 (2):—*Held*, the proceedings of the Settlement Officer were of an executive, rather than of a judicial, character, and did not operate either as a *res judicata* under s. 13 of the Code of Civil Procedure, or as a final decree under s. 107, estopping the plaintiffs from having the same matters tried by the regular Civil Court. The words "objection" and "dispute" in ss. 105 and 106 are not synonymous terms. SECRETARY OF STATE FOR INDIA *v.* KAJIMUDDY.

[23 Calc. 257

——, s. 105.

See s. 104.

[23 Calc. 257

See s. 108.

[21 Calc. 521

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS.

[23 Calc. 257

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 462

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——, s. 106.

See s. 104.

[23 Calc. 257

See s. 108.

[21 Calc. 521

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS.

[23 Calc. 257

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776, 935

[22 Calc. 477

[24 Calc. 462

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[21 Calc. 935

——, s. 107.

See s. 014.

[23 Calc. 257

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS.

[23 Calc. 257

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776

——, s. 108.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776, 935

[22 Calc. 477

[24 Calc. 462

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[21 Calc. 935

[23 Calc. 723

See VALUATION OF SUIT—APPEALS.

[23 Calc. 723

——, s. 108.—*Special Judge, Jurisdiction of —Publication of record of rights—Bengal Tenancy Act, ss.* 55, 105 *and* 106.] There is nothing in s. 108 of the Bengal Tenancy Act which limits the jurisdiction of a Special Judge to deal only with matters of objection taken after publication of the record of rights. DURGA CHARAN LASKAR *v.* HARI CHURN DASS.

[21 Calc. 521

——, ss. 143 and 144.

See SCH. III, ART. 6.

[21 Calc. 337

——, s. 148.

See SCH. III, ART. 6.

[21 Calc. 337

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——, s. 155.

See LIMITATION ACT, ART. 32.

[24 Calc. 160

——, s. 155.—*Suit for ejectment—Notice. Sufficiency of—Omission from notice, of requisition on tenant to pay compensation—Alternative relief.*] The words of s. 155 of the Bengal Tenancy Act "and in *any* case to pay reasonable compensation," &c., mean in *every* case; and a notice not containing a requisition to the tenant to pay such compensation is insufficient to support a suit for ejectment brought under that section. Where the suit was for ejectment from certain land, but the plaint contained other prayers, namely, for a declaration that the defendant had no right to build houses on the land, and for an injunction on him to remove houses he had built thereon, and the suit for ejectment failed from the insufficiency of the notice under s. 155, the Court *held* that the plaintiff was not entitled to a declaration or injunction as asked for. PERSHAD SINGH *v.* RAM PERTAB ROY.

[22 Calc. 77

1.—s. 158.—*Application to determine incidents of tenure—Applications against separate tenants—Form of petition—Procedure.*] Section 158 of the Bengal Tenancy Act does not authorise one application being made against a number of tenure-holders having separate and distinct tenures. The proper procedure is by separate applications against each. GOLAP CHAND NOWLAKHA *v.* ASHUTOSH CHATTERJEE.

[21 Calc. 602

2.—s. 158.—*Application for enhancement of rent when no settlement proceedings are in operation.*] The Court in dealing with an application under s. 158 of the Bengal Tenancy Act cannot pass a decree for enhancement of the rent. Where therefore a landlord seeks to enhance the rent of his tenant when no settlement proceedings are going on he must institute a suit for the purpose, and cannot do so by means of an application under s. 158. RAJESHWAR PERSHAD SINGH *v.* BURTA KOER.

[21 Calc. 807

3.—s. 158.—*Tenure, Incidents of—Application against some tenant holding two or more tenancies—Form of petition.*] *Held* by PETHERAM, C. J., and BANERJEE, J. (RAMPINI, J., dissenting), that, under s. 158 of the Bengal Tenancy Act, the landlord is authorized to include in one application two or more tenancies held by the same tenant. *Golap Chand Nowlakha* v. *Ashutosh Chatterjee*, I. L. R. 21 Calc. 602, referred to. DIJENDRANATH ROY CHOWDHRY *v.* SOYLENDRA NATH ROY CHOWDHRY.

[24 Calc. 197

——, s. 161.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

[23 Calc. 254

[24 Calc. 537, 746

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——, s. 167.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

[24 Calc. 746

——, s. 169.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[21 Calc. 169

——, s 171.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[24 Calc. 537

——, s. 173.

See APPEAL—ORDERS.

[21 Calc. 825

See LIMITATION ACT, ART. 178.

[24 Calc. 707

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 707

——, s. 173.—*Sale for arrears of rent—Purchase by benamidar for judgment-debtor—Sale void or voidable—Suit to set aside sale—Proper Court to decide whether sale should stand or not.*] Where a sale takes place under the Bengal Tenancy Act in execution of a decree for arrears of rent, and the purchaser is found to be a mere *benamidar* for the judgment-debtor,—*held*, in a suit to set aside the sale on that ground, that on the wording of s. 173 the sale was only voidable, and not absolutely void; that section leaves it in the discretion of the Court to set aside the sale or not as it thinks fit. Under that section the proper Court to determine whether the sale should stand or not is the Court that held the sale. GOPAL CHUNDER MITRA *v.* RAM LAL GOSHAIN.

[21 Calc. 554

——, s. 174.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[22 Calc. 800

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[22 Calc. 767

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.

[23 Calc. 393, 396 note

——, s. 176.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——, s. 178.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[24 Calc. 37

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[24 Calc. 272

[L. R. 23 I. A. 158

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[23 Calc. 427

——, s. 183.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[23 Calc. 179, 427

—— s. 184.

See SCH. III, ART. 2.

[23 Calc. 191

——, s. 187.

See s. 56.

[24 Calc. 169

——, s. 188.

See s. 56.

[24 Calc. 169

——, s. 189, Rules made under.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[23 Calc. 723

See VALUATION OF SUIT—APPEALS.

[23 Calc. 723

——, Sch. III, Art. 2.—*Limitation— Bengal Tenancy Act (VIII of 1885), s. 184—Suit for arrears of rent—Bengal Regulation VIII of 1819.*] A landlord, to recover arrears of rent for the year 1297 B. S. from the *putnidar*, filed a petition on the 1st Bysack 1298 (13th April, 1891) in the Court of the Collector, under the provisions of Regulation VIII of 1819, praying for the sale of the *putni taluk*. The *taluk* was sold and was purchased by the landlord on the 1st Jeyt 1298 (14th May, 1891). The whole of the arrears not being realized by the sale proceeds, the landlord brought an action on the 14th May, 1894, for the balance of the *putni* rent to the end of 1297 B. S. (12th April 1891). The defence was that the suit was barred by limitation—*Held*, that the suit was governed by the provisions of the Bengal Tenancy Act, s. 184, and Sch. III, Art. 2 (*b*); the period of limitation in a suit for rent provided by that article is three years from the last day of the Bengali year, in which the arrear falls due, and as in this case the arrear fell due in the Bengali year 1297, which ended on the 12th April, 1891, and the suit was not commenced until 14th May, 1894, more than three years from the last day of the Bengali year in which the arrear fell due, it was barred by limitation. BURNA MOYI DASSEE *v.* BURMA MOYI CHOWDHURANI.

[23 Calc. 191

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——, Sch. III, Art. 3.—*Limitation—Suit by occupancy ryot for possession brought against a tenant settled by landlord.*] Article 3 of Sch. III of the Bengal Tenancy Act (VIII of 1885), prescribing a limitation of two years, is not restricted to suits against the landlord alone; it applies to a suit brought against a tenant with whom the land was settled by the landlord. *Ramjanee Bibee* v. *Amoo Beparee*, I. L. R. 15 Calc. 317; and *Chunder Kishore Dey* v. *Rajkishore Mozumdar*, I. L. R. 15 Calc. 450, distinguished. BHEKA SINGH *v.* NAKCHHED SINGH.

[24 Calc. 40

1.—Sch. III, Art. 6.—*Limitation— Ex parted ecree in suit for rent—Civil Procedure Code, s. 108—Execution of decree, Application for—Final decree—Execution-proceedings struck off—Bengal Tenancy Act (VIII of 1885), ss. 143, 144 and 148.*] Having regard to ss. 143, 144 and 148 of the Bengal Tenancy Act, there is a special procedure laid down for rent-suits and therefore decrees in rent-suits are decrees under Art. 6 of Sch. III of that Act. The words "final decree" in Art. 6, Sch. III of the Bengal Tenancy Act, refer to the final decree in the suit, and cannot be held to include an order of an Appellate Court made in an application to set aside that decree under s. 108 of the Code of Civil Procedure. An *ex-parte* rent decree having been obtained on the 30th May, 1888, for a sum under Rs. 500, the decree-holder, on the 27th May, 1889, applied for execution thereof and attached certain properties of the judgment-debtor, the date fixed for the sale being the 31st August, 1889. The judgment-debtor applied under s. 108 of the Civil Procedure Code for a rehearing of the rent-suit, and on the day fixed for the sale applied for stay of execution: the sale was stayed, and the Court of its own motion and for its own convenience directed the execution-case to be struck off the file "for the present." On the 28th December, 1889, the Court passed an order refusing a rehearing of the suit, which order was upheld on appeal on the 16th May, 1890. On the 21st January, 1892, the decree-holder again applied for execution, at the same time praying that his application might be taken to be in continuation of his former application of the 27th May, 1889:—*Held*, that the application was one in continuation of the former proceedings in execution so far, at least, as regarded the property mentioned in the former application, but as regards other properties it must be held to be barred as not having been made within three years from the decree of the 30th May, 1888. BAIKANTA NATH MITTRA *v.* AUGHORE NATH BOSE.

[21 Calc. 387

2.—Sch. III, Art. 6.—*Limitation Act (XV of 1877), Art. 177—Execution of decree—Period from which limitation runs — Date of decree—Date of payment.*] On the 26th May, 1890, a rent-decree was passed for the sum of Rs. 400, payable on the 15th August, 1890. On the 9th August, 1893, the decree-holders applied for exe-

BENGAL TENANCY ACT (VIII OF 1885)—*concluded.*

cution of the decree:—*Held*, the period of limitation ran from the date of the decree and not from the date fixed for payment, and that the application was barred by Art. 6 of Sch. III, Act VIII of 1885. RAM SADAY MUKERJEE *v.* DWARKA NATH MUKERJEE.

[22 Calc. 644

BEQUEST VOID FOR UNCERTAINTY.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[18 Bom. 136
[21 Bom. 646

BETROTHAL.

See HINDU LAW—MARRIAGE — BETROTHAL.

[21 Bom. 23

BHAG.

See MORTGAGE — CONSTRUCTION OF MORTGAGES.

[18 Bom. 283

BHAGDARI ACT (BOMBAY).

See BOMBAY ACT V OF 1862.

BICYCLE.

See MADRAS MUNICIPAL ACT, SCH. B.

[19 Mad. 83

BILL IN LEGISLATIVE COUNCIL, DEBATE ON.

See STATUTES, CONSTRUCTION OF.

[18 Bom. 133

BILL OF COSTS.

See LIMITATION ACT, ART. 84.

[22 Calc. 943, 952 note

BILL OF LADING.

—*Exception in bill of lading—Seaworthiness—Suit for damage to goods by leakage while ship in dock.*] The plaintiffs' goods were loaded in the defendants' steamer then lying in dock to be carried from Bombay to certain ports in East Africa. At the time of loading, the ship was apparently in a sound and seaworthy condition. Two days after the goods had been put on board, and when the ship was still in dock, it sprung a leak, and the water came into the hold and damaged the plaintiffs' goods. The ship was taken to the dry dock, the cargo was shifted, and the leak repaired. It appeared that the leak had arisen from the fact that one of the plates of the ship had been worn thin in one particular spot, to that when the cargo was put on board, and the ship lay deeper in the water, the pressure became so great that a hole was made, and the water rushed in. The plaintiffs sued the defendants for damages. The defendants pleaded (1) that the ship was in a seaworthy condition when the goods were put on board; (2) that they were protected by the bill of lading which contained the following exception, *viz.*,

BILL OF LADING—*concluded.*

"Accident, loss and damage from vermin, barratry, jettison, collision, fire, machinery, boilers, steam and all the perils, dangers and accidents of the sea, rivers, land carriage and steam navigation of whatever nature and kind and accident, loss or damage from any act, neglect or default whatsoever of the pilot, master or mariners or other servants of the Company or from any deviation excepted":—*Held*, that the defendants were liable. While the ship was in dock it was not seaworthy, and the exception in the bill of lading did not limit the implied warranty of seaworthiness. VITHULDAS GOBER *v.* BOMBAY AND PERSIA STEAM NAVIGATION COMPANY.

[19 Bom. 639

—*Delivery of goods to consignee—Cargo unclaimed on arrival of ship—Rights of shipowner to land goods—Damages by rain—Madras Harbour Trust Act (Madras Act II of 1886).*] The defendant's steam ship arrived at Madras on 4th December, 1891, bringing bags of grain consigned to the plaintiffs under a bill of lading by which the defendants were to have the option of delivering the goods into a receiving ship or landing them at consignee's risk and expense, and their liability was to cease when the goods were free of the ship's tackle. The plaintiffs on the date of the arrival of the goods were not authorised to receive them. The plaintiffs set up a custom that cargo of this description ought to be landed on the beach; but, as this could not be done in the absence of the consignees, the defendants landed it the same day on the pier and delivered it into the custody of the Madras Harbour Trust for storage, pending delivery to the consignees. On the 8th of December, 1891, heavy rain fell, and on the same date plaintiffs learnt that the cargo had been delivered on the pier. When the plaintiffs came to take delivery on that day, a considerable portion had been damaged by rain, for which they now sued the defendants:—*Held* (1) that where the consignees were unable to take delivery in the ordinary way on the beach, the master of a ship has the option of landing and warehousing the goods, and that delivery to the Harbour Trust for custody was not wrongful; (2) that in the absence of proof that the defendants were negligent, or that they failed to deliver the goods, the suit must be dismissed. BRITISH INDIA STEAM NAVIGATION COMPANY *v.* IBRAHIM SULAIMAN.

[19 Mad. 169

BOARD OF REVENUE.

——, Appeal to.

See POTTAH.

[19 Mad. 324

——, Rules of.

See PRE-EMPTION — CONSTRUCTION OF WAJIB-UL-ARZ.

[17 All. 447

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[16 All. 40
[17 All. 226

BOMBAY ABKARI ACT (BOMBAY ACT V OF 1878).

——, s. 3, cl. (11), and s. 43, cl. (f).—*Drawing toddy—Manufacture of liquor.*] Drawing toddy is not 'manufacturing liquor' as defined in cl. 11 of s. 3 of the Bombay Abkari Act (V of 1878). The mere possession of implements for the purpose of drawing toddy is not an offence punishable under cl. (*f*) of s. 43 of the Act. QUEEN-EMPRESS *v.* PIRIO KALIO.

[18 Bom. 428

BOMBAY ACT.

——, 1862—V (Bhagdari Act).

See ATTACHMENT—SUBJECTS OF ATTACHMENT — BUILDING AND HOUSE MATERIALS.

[21 Bom. 588

——, s. 3.

See MORTGAGE — CONSTRUCTION OF MORTGAGES.

[18 Bom. 283

——, 1864—IV.

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

——, 1864—V.

See MAMLATDARS COURTS ACT, 1864.

——, 1865—I.

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865.

——, 1867—VIII.

See BOMBAY VILLAGE POLICE ACT.

——, 1873—VI.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873.

——, 1874—III.

See HEREDITARY OFFICES ACT.

——, 1875—III.

See BOMBAY TOLLS ACT.

——, 1876—III.

See MAMLATDARS COURTS ACT, 1876.

——, 1878—V.

See BOMBAY ABKARI ACT.

——, 1879—V.

See BOMBAY LAND REVENUE ACT.

——, 1880—I.

See KHOTI SETTLEMENT ACT.

——, 1880—XV, s. 3.

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 754

——, 1884—II.

See BOMBAY DISTRICT MUNICIPAL ACT, 1884.

BOMBAY ACT—*concluded.*

——, 1886—III.

See BOMBAY GENERAL CLAUSES ACT.

——, 1886—V.

——, s. 1.

See HEREDITARY OFFICES ACT, s. 10.

[20 Bom. 423

——, s. 2.

See HEREDITARY OFFICES ACT, s. 4.

[21 Bom. 733

See HINDU LAW—REVERSIONERS' POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

[19 Bom. 614

See MAHOMEDAN LAW—INHERITANCE.

[21 Bom. 118

——, 1888—III.

See BOMBAY MUNICIPAL ACT, 1888.

——, 1888—VI.

See GUJARAT TALUQDARS ACT.

——, 1890—IV.

See BOMBAY DISTRICT POLICE ACT.

BOMBAY CIVIL COURTS ACT (XIV OF 1869).

——, ss. 9 and 10.

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 480

——, s. 26.

See VALUATION OF SUIT—APPEALS.

[20 Bom. 265

——, s. 32.

See CIVIL PROCEDURE CODE, s. 424.

[20 Bom. 697

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 754, 773

BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT VI OF 1873).

——, s. 11.—*Bombay Municipal Act (Bombay Act II of 1884), s. 57—Liability to pay taxes—Halalkhore tax—Water tax—Notice by Municipality—Burden of proof—Presumption—Evidence Act (I of 1872), s. 114, ill. (e).*] A defendant who in answer to a claim for arrears of taxes by a Bombay District Municipality alleges that the taxes were illegal (1) because no notice had been given him under s. 57 of Bombay Act II of 1884; (2) because no notice had been issued by the Municipality to the Commissioners under s. 11 of Bombay Act VI of 1873, must prove the defence; and, in the absence of such proof, the Court will presume that the Municipality has used the regular

BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT VI OF 1873)—*continued.*

procedure, and that the common course of business has been followed in the particular cases. The liability to pay the *halalkhore* tax does not arise until after notice has been given under s. 57 of the Act (Bombay Act II of 1884). MUNICIPALITY OF SHOLAPUR *v.* SHOLAPUR SPINNING AND WEAVING COMPANY.

[20 Bom. 732

——, s. 17.—*Public street—Bombay Municipal Act (Bombay Act III of 1888), s. 3.*] In a suit brought by the plaintiff against the Municipality of Ahmedabad, the question was whether a certain street was a public street within the contemplation of the Bombay District Municipal Act (Bombay Act VI of 1873). The District Judge, on the evidence and having regard especially to the fact that the street in question was protected by a gate closed at night by a *polia*, or watchman, who lived over the gate, and was under the control of and paid by the owners of the houses in the street, *held* that there had been no dedication of the land to the public, and that the public had not acquired such a right of going over it as to make it a public street vested in the Municipality. On second appeal by the defendant the High Court refused to interfere with the decision of the lower Court. In the absence of a definition of a public street in the Bombay District Municipal Act (VI of 1873) the High Court refused to apply the definition contained in the City of Bombay Municipal Act (III of 1888). AHMEDABAD MUNICIPALITY *v.* MANILAL UDENATH.

[20 Bom. 146

——, s. 21, cls. (1) and (2).—*Bombay District Municipal Act Amendment Act (Bombay Act II of 1884), s. 27, cl. 7, and s. 32—Tax imposed by Municipality.*] In 1891 the Municipality of Surat appointed a Committee to revise the taxation of the city, proposing to reduce some of the existing taxes and impose others with a view (*inter alia*) of obtaining a better water-supply for the city. A scheme of taxation drafted by the Committee was subsequently adopted by the Municipality, and it included a new house and property tax. The Municipality then issued a notice with regard to this last-mentioned tax under the provisions of s. 21 of Bombay Act VI of 1873 setting forth the particulars of the proposed tax and requiring objections to be lodged within a fortnight from the date of the notice. A number of objections were received which were laid on the table for twenty-one days for perusal and consideration by the Municipal Commissioners. At the end of that time a special meeting of the Commissioners was held, at which it was resolved that the objections were invalid, and the scheme and the rules with regard to the levying of the tax were forwarded to Government and were sanctioned. The plaintiffs sued for an injunction restraining the Municipality from levying the tax, contending that it was illegal, on the ground (1) that there was no Municipality desirous of imposing the tax for any of the purposes allowed by the Act, inasmuch as the Commissioners who passed the resolution to impose the tax did not know for what purpose the tax was to be imposed; (2) that the resolution imposing the tax was illegal because the notice calling the meeting of the Commissioners which passed the resolution did not specify this tax as the object of the meeting; (3) that the notice given under s. 21 of Bombay Act VI of 1873 was bad, as it did not state the purpose of the proposed tax; (4) that the nature and the amount of the tax were not sufficiently stated in the notice; (5) that the notice ought to have stated the mode in which the valuation of property for the purpose of the tax was to be made; (6) that the objections of the rate-payers were not sufficiently considered; (7) that it did not appear whether the tax was to be paid in advance or not; and (8) that the assessment of the tax was made on a wrong basis:—*Held*, that the purpose of the tax was sufficiently known to the Commissioners; (2) that the resolution imposing the tax was not invalid, although the notice convening the meeting did not specify the object of the meeting; (3) that the notice need not specify the purpose of the tax; (4) that as to the nature and the amount of the tax the notice was sufficient, as it stated that the amount would depend on the valuation of the property; (5) that the notice need not define the mode of valuation; (6) that the objections were sufficiently considered; (7) that the tax was to be paid partly in advance; (8) that the assessment would not affect the validity of the tax, but would give a right of appeal to have the valuation set right:—*Held*, therefore, that the tax was legally imposed. SURAT CITY MUNICIPALITY *v.* OCHHAVARAM JAMNADAS.

[21 Bom. 630

1.—s. 33.—*Demolition of building—Suit for damages.*] Plaintiff having built a new wall on the site of an old wall, including the old foundations, the Municipality pulled the wall down. Plaintiff thereupon sued the Municipality for damages. The Judge rejected the claim for damages:—*Held*, that the building of a new wall on the site of the old wall, including the old foundations, was not an addition to the existing building within the meaning of s. 33 of the District Municipal Act (Bombay Act VI of 1873). The Municipality was, therefore, liable in damages for any expenses which the plaintiff was put to by their pulling down the wall. KRISHNAJI NARAYAN POKSHE *v.* MUNICIPALITY OF TASGAON.

[18 Bom. 547

2.—s. 33.—*Notice of proposed building—Right of Municipality to demolish building erected without permission to build.*] On the 18th August, 1890, plaintiffs sent a notice to the town Municipality of Umreth, intimating their intention to erect a building on their land, and giving a rough sketch plan of the land intended to be built upon. In this notice plaintiffs did not expressly state their intention to build the wall in dispute. On the 28th August, 1890, the Municipality wrote to the plaintiffs, requiring them to furnish a plan showing the design of the proposed building with its measurements. On the 30th September, 1890, the plaintiffs, without furnishing the plan as required, built a wall on their land. Thereupon the

BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT VI OF 1873)—*continued.*

Municipality gave a notice to the plaintiffs requiring them to pull it down, as it had been built without their permission. The plaintiffs having failed to comply with this notice, the wall was demolished, and its materials were carried away by the municipal servants. Thereupon the plaintiffs sued the Municipality to recover damages for the wrongful demolition of the wall :—*Held*, that the plaintiffs had contravened the provisions of cl. 1 of s 33 of Bombay Act VI of 1873, inasmuch as they had built the wall without giving any notice, or (if they did gave notice) without affording the information required by the Municipality. The Municipality were, therefore, justified in ordering the wall to be demolished. DAVE HARISHANKAR *v.* TOWN MUNICIPALITY OF UMRETTH.

[19 Bom. 27

3.—**s. 33.**—*Building beyond area for which permission is granted—Omission to give notice of building—Power of Municipality to order alteration or demolition of a building erected without notice or in excess of the permission.*] Under the Bombay District Municipal Act where an owner having obtained permission under s. 33 to build on one portion of his land builds on another portion without having obtained fresh permission, if such part of his building as is outside the limits for which permission has been granted is built without notice, the Municipality can in their discretion order it to be demolished. BHAWANISHANKAR *v.* SURAT CITY MUNICIPALITY.

[21 Bom. 187

——, **s. 42, cl. (1), and ss. 48 and 75.**—*Removal of obstruction in public street—Notice of removal—Corporate bodies—Practice—Suit for injunction.*] Under the District Municipal Act (Bombay Act VI of 1873) a Municipality has power to have all obstructions in a public street removed whether the obstructions were placed there lawfully or not. The only distinction which the Act draws is between obstructions erected or placed before the Act came into operation and those which have been erected or placed since it came into operation. As to the former, s. 42, cl. (1) of the Act provides that notice should be given, and if legally placed on the street, compensation should be awarded for their removal. As to the latter, the Municipality can remove them under s. 48 even without giving any notice. The public have a right of passing over the whole of a street if it is a public street. It is not the practice of the Court to interfere with corporate bodies "unless they are manifestly abusing their power." AHMEDABAD MUNICIPALITY *v.* MANILAL UDENATH.

[19 Bom. 212

——, **s. 54.**—"*Offensive liquid*"—*Allowing waste or dirty water to run on to public street.*] A person does not render himself liable to a penalty under s. 54 of Bombay Act VI of 1873 for allowing mere waste or dirty water to run from his premises on to a public street, unless the water is "offensive." IN RE GUBLABDAS BHAIDAS.

[20 Bom. 83

BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT VI OF 1873)—*concluded.*

——, **s. 84.**

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 49.

[18 Bom. 400

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[18 Bom. 442

——, **s. 86.**

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 48.

[18 Bom. 19

BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT II OF 1884).

——, **s. 23.**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[21 Bom. 279

——, **s. 27.**

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 21.

[21 Bom. 630

——, **s. 48.**—*Bombay District Municipal Act (Bombay Act VI of 1873), s. 86—Suit against Municipality for ejectment.*] The words "in the case of any such action for damages" in s. 48 of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884) clearly show that it was contemplated that there might be actions of another description to which the provisions in the former paragraph would be applicable. The section does not contemplate only "suits to recover monetary compensation for a wrongful act." A suit in ejectment—not being a suit brought to recover damages "for an act done or intended to be done"—was excluded under s. 86 of the Bombay District Municipal Act (Bombay Act VI of 1873), but being an "action for an act done," that act, being the dispossession by the Municipality with a view to being restored to possession, falls under the provisions of the first paragraph of s. 48 of Bombay Act (II of 1884). NAGUSHA *v.* MUNICIPALITY OF SHOLAPUR.

[18 Bom. 19

——, **s. 49.**—*Bombay District Municipal Act (Bombay Act VI of 1873), s. 84—Non-payment of taxes—Penal Code (XLV of 1860), s. 40—Penalty—"Fine"—Imprisonment in default of payment of penalty.*] There is no distinction between the word "penalty" as used in Bombay District Municipal Act (Bombay Act VI of 1873) and the word "fine" as used in s. 64 of the Penal Code (XLV of 1860). Imprisonment can, therefore, be awarded in default of any penalty inflicted under s. 84 of the Municipal Act. IN RE LAKMIA.

[18 Bom. 400

——, **s. 57.**

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 11.

[20 Bom. 732

BOMBAY DISTRICT POLICE ACT (BOMBAY ACT IV OF 1890).

——, s. 48, cl. (b).—*Nuisance—Noise—"Near a street," Meaning of the words—Power of the Police to regulate the playing of music in private houses.*] Section 48, cl. (*b*) of Bombay Act IV of 1890 does not empower the District Superintendent or Assistant Superintendent of Police to stop music in private houses. The words in the clause "near a street" are intended to mean open spaces by the sides or at the ends of streets. IN RE JAMNADAS BHUKHANDAS.

[19 Bom. 737

——, ss. 51 and 52.

See ABETMENT.

[20 Bom. 394

BOMBAY GENERAL CLAUSES ACT (BOMBAY ACT III OF 1886).

See REGISTRATION ACT, s. 17.

[21 Bom. 387

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—IMMOVEABLE PROPERTY.

[21 Bom. 387

BOMBAY GOVERNMENT RESOLUTION.

——, No. 512 of 1882.

See HEREDITARY OFFICES ACT, s. 4.

[21 Bom. 733

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879).

——, ss. 3 and 203.—*Forest Officer—Revenue Officer.*] A Forest Officer is not a Revenue Officer within the definition in s. 2 of the Land Revenue Code (Bombay Act V of 1879), and does not become one merely by being placed under a Revenue Officer for purposes of control. NARAYAN BALLAL *v.* SECRETARY OF STATE FOR INDIA.

[20 Bom. 803

——, s. 15.

See MAMLATDARS COURTS ACT, 1876, s. 3.

[21 Bom. 585

——, ss. 38 and 39.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[21 Bom. 684

——, s. 56.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[21 Bom. 396

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[21 Bom. 381

——, s. 57.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[21 Bom. 381

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879)—*continued.*

——, s. 71.

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.

[19 Bom. 43

——, s. 81.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[20 Bom. 747

——, s. 83.

See LANDLORD AND TENANT—NATURE OF TENANCY.

[18 Bom. 221, 443

——, s. 84.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[19 Bom. 150
[21 Bom. 311

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[20 Bom. 354

——, s. 108.

See KHOTI SETTLEMENT ACT, s. 16.

[20 Bom. 729

See KHOTI SETTLEMENT ACT, s. 17.

[20 Bom. 475
[21 Bom. 467, 480

——, s. 150.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[21 Bom. 381

——, s. 153.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[20 Bom. 747

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[21 Bom. 381

——, s. 193.

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.

[19 Bom. 43

——, s. 203.

See s. 3.

[20 Bom. 803

——, s. 211.

See KHOTI SETTLEMENT ACT, s. 17.

[21 Bom. 244

——, s. 216.—*Suit by an inamdar against a khot to recover balance of land revenue—Survey made by the British Government—Change in rate of assessment—Jurisdiction of Civil Court—Village partially alienated.*] In a suit by an *inamdar* of a village against a *khot* to recover rent in kind

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879)—*concluded.*

(according to the market rate at the time of payment), the defendant (*khot*) contended that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid, and that the Civil Court had no jurisdiction to entertain the suit under the Land Revenue Code (Bombay Act V of 1879), s. 216, sub-clause (*b*) :—*Held*, that the payment which the *khot* had been making to the *inamdar* before the time of the British survey was in the nature of assessment or rating by Government; but *held*, also, that the plaintiffs were entitled to the old assessment as claimed by them. It was plain that in cases falling within sub-clauses (*a*) and (*e*) of s. 216 of the Land Revenue Code, Bombay Act V of 1879, the *inamdar's* interest in the assessment would not be affected by the application of Chaps. VIII to X of that Act. He would still get the old assessment in the alienated lands in the village in the former case and the same amount of assessment in the latter, and the same must have been the intention in cases contemplated by sub-cl. (*b*). The "holder of the village" in the concluding paragraph of s. 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." GANGADHAR HARI KARKARE *v.* MORBHAT PUROHIT.

[18 Bom. 525

BOMBAY MINORS ACT (XX OF 1864).

See MINOR—BOMBAY MINORS ACT.

[19 Bom. 245

——, s. 2.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[20 Bom. 534

BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888).

——, s. 3.

See BOMBAY DISTRICT MUNICIPAL ACT, s. 17.

[20 Bom. 146

——, s. 248.—*Fazendar—Liability to provide privy accommodation—"Owner"—"Premises"—Construction of statutes.*]

A *fazendar* is not the person liable, as owner of the premises, to provide privy accommodation under s. 248 of the Bombay Municipal Act (Bombay Act III of 1888), the beneficial owner of the house built on the *fazendar's* land being "the owner" within the meaning of the section. *Per* RANADE, J. :—The world "premises" in s. 248 of Municipal Act is used with reference to the building to which the privy belongs. MUNICIPALITY OF BOMBAY *v.* SHAPURJI DINSHA.

[20 Bom. 617

——, ss. 298, 299 and 301.

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT, 1888.

[18 Bom. 184

BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888)—*continued.*

1.—ss. 298, 299 and 301.—*Compulsory acquisition of land—Set back—Compensation paid to owner for land with buildings—Basis of valuation of land.*] Where in a case of set back, land with buildings thereon was taken up by the Municipal Commissioner from a private owner under Bombay Act III of 1888, ss. 298, 299 and 301 :—*Held*, that the amount of compensation awarded to the owner should be calculated with regard to the price given within a few years previously for land of a similar character in the immediate neighbourhood of the land in question :—*Held*, also, that the addition of 15 per cent. could not be allowed. *Municipal Commissioner* v. *Patel Haji Mahomed*, I. L. R. 14 Bom. 292, followed. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v.* ABDUL HUK.

[18 Bom. 184

2.—ss. 298, 299, 301, 504 and 527—*Land taken by the Municipality for street improvement—Compensation for land taken—Dispute as to amount of compensation—Notice of suit—Limitation.*] In 1891 the Municipal authorities of Bombay gave notice to the plaintiffs under s. 299 of Bombay Act III of 1888 that they required 23·30 square yards of the plaintiff's land for street improvement. On the 14th December, 1891, the plaintiff gave possession of the land to the Municipality, and on 27th January, 1892, claimed Rs. 60 per square yard as compensation. By letter dated 23rd February, 1892, the Municipal Commissioner (without prejudice) offered Rs. 50 per square yard as compensation, and stated that on the plaintiff producing the title-deeds and papers to establish his title, the necessary documents in connection with the payment would be prepared. Nothing further took place in the matter until the 14th February, 1894, on which date the plaintiff wrote a letter to the Municipal Commissioner in which without mentioning any sum he requested the payment of the amount which might be due to him as compensation for his land taken by the Municipality. The Commissioner refused to pay the compensation, contending that the plaintiff's claim was time-barred. The plaintiff thereupon brought this suit claiming Rs. 1,165 (being at the rate of Rs. 50 per square yard) as compensation for the land taken up by the defendant or in the alternative for that sum as damages for the breach of contract to pay purchase-money for the land. The defendant pleaded (1) that notice under s. 527 of the Municipal Act (Bombay Act III of 1888) was necessary before suit filed; and (2) that the suit was barred by limitation. The Chief Judge of the Small Cause Court found for the defendant with costs and dismissed the suit contingent on the opinion of the High Court. On a case stated for the High Court—*Held* (1) that notice under s. 527 of Bombay Act III of 1888 was not necessary, that section not being applicable to suits brought to enforce payment of compensation under s. 301 of the Act; (2) that the suit was not barred by limitation. *Per* FARRAN, J. : —A suit against the Municipality of Bombay for compensation for land acquired by the Municipality under s. 299 of Bombay Act III of

BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888)—*continued.*

1888 is not an action of tort or *quasi*-tort, but a simple action for the price of land, which the terms of s. 301 of the Act impose upon the Commissioner to pay. The obligation to pay that price is of the same nature, (1) whether the owner assents to the valuation of the land placed upon it by the Commissioner; (2) whether the value is determined by the Chief Judge of the Small Cause Court; or (3) whether it is left undetermined. Section 527 does not apply to any of these three cases. In all of them the obligation to pay is imposed by s. 301 and does not arise from the manner in which the amount of the price to be paid is arrived at. Section 504 prescribes the only mode in which, in case of dispute, the value of the land can be determined. If the owner of land disputes the Commissioner's valuation he must apply to the Chief Judge of the Small Cause Court within a year. If he does not do so, the result is that he loses the power of effectually disputing the Commissioner's valuation, but does not lose his right to the amount of the valuation. The owner of land has a remedy independent of the provision of s. 504. That section only deals with cases where there is a dispute as to the value of the land, and leaves untouched those cases where there is no such dispute, but where the Commissioner for some reason declines to pay. In such cases the owner is left to his ordinary remedy, no special mode of procedure being prescribed. Cases in which there has been a dispute, but in which the owner abandons his claim to dispute the valuation of the Commissioner, fall within the latter category. MANEKLAL MOTILAL *v.* MUNICIPAL COMMISSIONER OF BOMBAY.

[19 Bom. 407

——, s. 353.—*Notice to a house-owner to reduce the height of his building given more than three months after its completion—"Completion," Meaning of.*] One *R* was served with a notice, under s. 353 of the City of Bombay Municipal Act (Bombay Act III of 1888), requiring him to reduce the height of a building which he had erected. The building was completed in June, 1893, and the notice was issued on 13th January, 1894. *R* was prosecuted for not complying with this notice. He contended that the notice was time-barred, as it had not been given within three months after the completion of the building. In answer to this plea it was urged, on behalf of the Municipality, that the building could not be said to have been completed, unless and until such accommodations as privies and cesspools had been executed in accordance with the requirements of the Health Department, and that, therefore, the notice was within time:—*Held*, that the notice was time-barred. The word "completion" in s. 353 of Bombay Act III of 1888 must be taken in its ordinary sense, and the Court cannot read into the section "in accordance with sanitary regulations" or "sanitary officers' opinions." IN RE RAGHUNATH MAKUND.

[19 Bom. 372

——, s. 504.

See s. 298.

[19 Bom. 40

BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888)—*concluded.*

——, s. 527.

See s. 298.

[19 Bom. 407

BOMBAY REGULATION.

——, 1818—IV, s. 52.

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 773

——, 1827—II.

See JURISDICTION OF CIVIL COURT—CASTE.

[19 Bom. 507
[20 Bom. 190

——, s. 43.

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 754, 773

——, s. 52.

See PLEADER—REMUNERATION.

[21 Bom. 42

——, 1827—V.

See MORTGAGE—POWER OF SALE.

[21 Bom. 267

——, s. 15.

See MORTGAGE—CONSTRUCTION OF MORTGAGES.

[20 Bom. 296

——, 1827—VIII.

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[18 Bom. 748
[19 Bom. 399

See CASES UNDER CERTIFICATE OF ADMINISTRATION — CERTIFICATES UNDER BOMBAY REGULATION VIII OF 1827.

——, s. 10.

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[21 Bom. 102

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 102

——, 1827—IX, s. 6.

See REGISTRATION ACT, 1877, s. 50.

[18 Bom. 332

BOMBAY REVENUE JURISDICTION ACT (X OF 1876).

——, s. 3.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[20 Bom. 734

BOMBAY REVENUE JURISDICTION ACT (X OF 1876)—*continued.*

——, s. 4.

See HEREDITARY OFFICES ACT, s. 17.

[19 Bom. 581

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[18 Bom. 525
[20 Bom. 747
[21 Bom. 634

——, s. 4.—*Service inam land—Suit for a declaration of title to trees thereon and for damages—Jurisdiction of Civil Court—Hereditary Offices Act (Bombay Act III of* 1874)*—Hereditary officer—Officiator.*] The plaintiff complained that he was prevented from cutting the trees growing on land situate in the village of Tungarli, belonging to certain persons who had sold the trees to him. He claimed damages and an injunction restraining the Collector from interfering with him. The defendant pleaded that the trees did not belong to the plaintiff's vendors, being on service *inam* land. The lower Court dismissed the plaintiff's claim, holding that the land, on which the trees were growing, was service *inam* land, and that the plaintiff's vendors had no title to them. On appeal, the High Court, on the evidence, upheld the lower Court's decision that the land was *inam* service land, but *held* that it did not necessarily follow that the trees upon it were the property of Government and not of the *vatandars*. The latter might be the owners of the trees subject to a condition. The case was, therefore, remanded to the District Court for a finding on an issue as to whether the holders of service *inam* lands had a title to the trees on the lands, and if so, whether they had the right to cut down trees without the permission of the Collector. On this finding the District Judge found in the affirmative. The case then came again before the High Court, when a preliminary objection was taken that under s. 4 of Act X of 1876 the Court had no jurisdiction:—*Held*, that it having been decided that land in question was service *inam* land, the Court under s. 4, cl (*a*) of Bombay Act X of 1876, ceased to have jurisdiction over the plaintiff's claim against Government in respect of the trees growing thereon, as such claims related to property appertaining to the office of a village officer. DESOUZA DEVINO *v.* SECRETARY OF STATE FOR INDIA.

[18 Bom. 319

——, s. 11.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[20 Bom. 764

——, s. 11.—*Revenue Officer—Forest Officer—Forest Act (VII of* 1878)*—Right of appeal.*] Section 11 of Act X of 1876 only applies to an act or omission of a Revenue Officer, and only in cases where the law allows an appeal. A Forest Officer is not a Revenue Officer. Act X of 1876 must be construed strictly. No right of appeal

BOMBAY REVENUE JURISDICTION ACT (X OF 1876)—*concluded.*

can be given except by express words. NARAYAN BALLAL *v.* SECRETARY OF STATE FOR INDIA.

[20 Bom. 803

——, s. 15.

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 754, 773

BOMBAY SURVEY AND SETTLEMENT ACT (BOMBAY ACT I OF 1865).

See KHOTI SETTLEMENT ACT, s. 17.

[21 Bom. 235

——, s. 32.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[21 Bom. 684

BOMBAY TOLLS ACT (BOMBAY ACT III OF 1875).

——, s. 7.—*Lease to levy tolls—Lessee, Right of, to admit partners—Keeping two sets of accounts—False accounts kept to deceive Government.*] A lessee from Government of the right to levy tolls admitted into partnership with him the plaintiff and two others. One of the conditions attached to the lease prohibited sub-letting. The plaintiff having brought a suit for his share of the profits realized in the transaction, the Judge dismissed the suit on the ground that the partnership was illegal, being of opinion that sub-letting and admitting a partner were identical:—*Held*, reversing the decree, that the partnership was not illegal. Where in such a partnership two sets of account were kept, one true and the other false, *held* that such practice, however reprehensible was not illegal under s. 7 of the Tolls Act (Bombay Act III of 1875), and did not disentitle the plaintiff to show as between himself and his partners what was the actual profit of the concern. GANESH VITHAL *v.* SHRIPAD DATTOBA NAIK.

[20 Bom. 668

BOMBAY VILLAGE POLICE ACT (BOMBAY ACT VIII OF 1867).

——, ss. 10, 11 and 12.—*Duties of the Police patel in cases of unnatural or sudden death—Ancient village system of Police, how affected by the Code of Criminal Procedure* (1882).] The ancient village system of Police, as regulated by Bombay Act VIII of 1867, remains unaffected by the Code of Criminal Procedure (Act X of 1862) except where the Code contains a specific provision. Under Bombay Act VIII of 1867, the Police patel has to do much more than merely inform the District Police. He has himself to investigate the matter of a crime and obtain all procurable evidence. Under s. 11 of the Act, if an unnatural or sudden death occur, or any corpse be found, he must *forthwith* hold an inquest and investigate with the *panch* the causes of death and all the circumstances of the case, and make a written report of the same. If it appears that the death was unlawfully caused, he must immediate-

BOMBAY VILLAGE POLICE ACT (BOMBAY ACT VIII OF 1867)—*concld.*

ly give notice to the Police station, and if the state of the corpse permits, he shall *at once* forward it to the Civil Surgeon or other appointed medical officer. These provisions of the law are likely to be defeated if the Police patel refrains from the proper action until the District Police-officers arrive on the spot. QUEEN-EMPRESS *v.* RAGHO MAHADU.

[19 Bom. 612

BOND.

See LIMITATION ACT, ART. 147.

[20 Bom. 408

See STAMP ACT, S. 3, CL. 4.

[22 Calc. 757
[17 All. 211

——, Construction of.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

[19 Mad. 140

See DEBTOR AND CREDITOR.

[22 Calc. 434

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.

[17 All. 511
[19 All. 39

See LIMITATION ACT, ART. 132.

[24 Calc. 281, 382
[20 Mad. 245

See TRANSFER OF PROPERTY ACT, S. 67.

[17 Mad. 131
[24 Calc. 677

——, Payable by instalment.

See CIVIL PROCEDURE CODE, S. 257A.

[17 Mad. 383

See LIMITATION ACT, ART. 75.

[20 Bom. 109

——, Recital in.

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS.

[20 Bom. 636

——, Suit on.

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

[20 Bom. 435

——, Unregistered.

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[18 Bom. 48

—Form of bond—Bond not to be operative until dishonour of hundi with respect to which bond has been executed.] An instrument, which is in

BOND—*concluded.*

the nature of a bond, is not the less a bond because it does not come into operation unless and until the *hundi* with respect to which it is passed has been dishonoured. LAKSHMANDAS RAGHUNATHDAS *v.* RAMBHAU MANSARAM.

[20 Bom. 791

BOUNDARIES.

——, Dispute as to.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 935

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATION.

[21 Calc. 504

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622

[21 Calc. 935

BOUNDARY.

—Question of boundary—Evidence in cases of disputed boundary—Onus of proof.] In questions of boundary, especially where the dividing line in dispute runs through waste lands which have not been the subject of definite possession, the rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter-claimants, and both parties are bound to do what they can to aid the Court in ascertaining the true line. LUKHINARAIN JAGADEB *v.* JODU NATH DEO.

[21 Calc. 504
[L. R. 21 I. A. 39

BREACH OF THE PEACE.

See POSSESSION, ORDER OF CRIMINIAL COURT AS TO—LIKELIHOOD OF BREACH OF PEACE.

[24 Calc. 391

——, Procession likely to cause.

See MADRAS POLICE ACT, S. 21.

[17 Mad. 37

BRITISH SUBJECT, OFFENCE COMMITTED BY, IN FOREIGN TERRITORY.

See WRONGFUL CONFINEMENT.

[19 Bom. 72

BROKER.

—Position and rights of broker—Agent—Right to commission—Claim of brokerage from both vendor and vendee—Vendor and purchaser.] A broker is entitled to his commission if the relation of buyer and seller is really brought about by him, although the actual sale has not been effected by him. A broker is entitled to his commission where he has induced in the vendor the contracting mind, the willingness to open negotiations upon a reasonable basis even though a change or modification of the terms of the contract is made by the buyer and seller without his intervention.

BROKER—*concluded.*

A broker sued the Municipality of Bombay for brokerage in respect of lands purchased by them: —*Held*, that, if during the time that the broker was negotiating with the vendor, the latter was induced to consent to the sale, the broker was entitled to his brokerage. It was not material to inquire what operated upon the mind of the vendor, and whether it was the advice of friends, or the knowledge that his land could be acquired compulsorily, or the persuasions of the broker. It was sufficient to support the broker's claim if the vendor's acceptance of the terms was brought about during his intervention; and the fact that the Municipal Commissioner stepped in at the last moment, and himself actually struck the bargain, did not deprive the broker of his brokerage. Primarily a broker is merely the agent of the party by whom he is originally employed. To make the other side liable to pay him brokerage it must be shown that he has been employed by such party to act for him, or that in the contract he has agreed to pay brokerage. MUNICIPAL CORPORATION OF BOMBAY *v.* CUVERJI HIRJI; MOTLIBAI *v.* CUVERJI HIRJI.

[20 Bom. 124

BUILDING.

See ATTACHMENT—SUBJECTS OF ATTACHMENT - BUILDING AND HOUSE MATERIALS.

[21 Bom. 588

——, "Completion" of.

See BOMBAY MUNICIPAL ACT, S. 353.

[19 Bom. 372

BUILDINGS.

——, Erection of.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 33.

[18 Bom. 547
[19 Bom. 27
[21 Bom. 187

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[18 All. 115

See ENCROACHMENT.

[20 Bom. 298

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[18 Bom. 66
[22 Calc. 820
[20 Bom. 1

See PRESCRIPTION — EASEMENTS — RIGHTS CONCERNING WATER.

[20 Bom. 788

——, Repair of.

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 179.

[19 Mad. 241

BUILDINGS—*concluded.*

——, Right to removal of.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[19 Mad. 38

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR.

[18 Bom. 474
[20 Bom. 788

BURMAH CIVIL COURTS ACT (XVII of 1875).

——, s. 49.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[24 Calc. 30

BURMAH COURTS ACT (XI OF 1889).

——, s. 40.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[24 Calc. 30

BULL, DEFINITION OF.

See PENAL CODE, S. 429.

[22 Calc. 457

BURIAL-GROUND, TRESPASS ON.

See RELIGION, OFFENCES RELATING TO.

[18 All. 395

BYE-LAW, VALIDITY OF.

See BENGAL MUNICIPAL ACT, 1876, S. 313.

[21 Calc. 837

See N.-W. P. AND OUDE MUNICIPALITIES ACT, S. 55.

[19 All. 732

CALCUTTA MUNICIPAL ACT (BENGAL ACT IV OF 1876), ss. 280—282.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, S. 2.

[21 Calc. 528

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BENGAL ACT II of 1888).

——, s. 2, and ss. 252, 256, 257 and 265.—*Calcutta Municipal Act (Bengal Act IV of* 1876), *ss.* 280, 281 *and* 282—*Basti land—Urgency—Trespass—Suit for damages.*] Section 2, para. 5, of Bengal Act II of 1888 (the Calcutta Municipal Consolidation Act), by which Act the former Calcutta Municipal Act (Bengal Act IV of 1876) is repealed, provides that pending proceedings which may have been commenced under any repealed Act shall be deemed to have been *commenced* under the new Act; but though commenced before the passing of the new Act they must, to be effectual, be continued under its provisions, and can only be used to enforce rights and powers in existence at the time when it is sought to enforce them. Where,

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BENGAL ACT II OF 1888)—*continued.*

therefore, before the passing of the Act II of 1888, and whilst Act IV of 1876 was in force, the Municipality took measures under the latter Act to cleanse *basti* land which was in an insanitary state, and notwithstanding the passing of Act II of 1888, which provided totally different preliminaries and procedure for the purpose, continued the improvements practically under the Act of 1876:—*Held*, that even if the proceedings could be considered, under s. 2 of Act II of 1888, to have been commenced under the new Act, the action of the Municipality amounted to trespass for which they were liable in damages to the owner of the land. CORPORATION OF CALCUTTA *v.* JADU LALL MULLICK.

[21 Calc. 528

——, **s. 31, and ss. 8, 19, 20, 21, 22 and 23.**—*Specific Relief Act (I of 1877), s. 45—Municipal election—Municipal Commissioner, Election of—List of voters—Chairman, Jurisdiction of—Quo warranto—High Court, Jurisdiction of—Rules of Local Government.*] There is nothing in the Calcutta Municipal Act (Bengal Act II of 1888), or in the Local Government rules issued under s. 19 of the Act, which requires that the name of a candidate, or of the proposer, seconder, or approver of a candidate, at a municipal election, should be published in the revised list of voters. Sections 20 and 23 of the Act only lay down rules applicable to voters; they do not control the qualifications of proposers, seconders, or approvers. *Semble*—The High Court has jurisdiction by proceeding in the nature of a *quo warranto* to restrain a person who has not been duly elected from exercising the functions of a duly elected Commissioner. The Chairman has no judicial discretion in preparing the list of candidates. *In the matter of Mutty Lall Ghose*, I. L. R. 19 Calc. 192, approved. Under s. 31 of the Act, every candidate for election must send in his name to the Chairman not less than seven days before the day fixed for election, together with the names of his proposer, seconder, and approvers. The Chairman has no power to waive this rule. Where there is a *primâ facie* compliance with s. 31 of the Act, the Chairman has no power to go further and determine questions affecting the status of persons claiming to be candidates. The Chairman can only revise the original list of voters in the manner laid down by s. 22, or on applications made under s. 21, or in pursuance of an order from the Presidency Magistrate under s. 23. The issue of a supplementary list of voters is not sanctioned by the Act. A definition of the term "elector" with necessary qualifications is given in s. 8 of the Act. There is nothing in the Act preventing a person qualified to vote under s. 8 from voting, although his name does not appear on the revised list of voters. The only prohibition is that found in the Local Government rules issued under s. 19 of the Act. IN THE MATTER OF CORKHILL.

[22 Calc. 717

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BENGAL ACT II OF 1888)—*concluded.*

——, **s. 87 and Sch. II.**—*Insurance Companies registered in England and carrying on business through agents in Calcutta, Liability of, to pay the municipal license tax.*] The Standard Marine Insurance Company, being an insurance company which is registered in England and carries on insurance business through the agency of a firm of general merchants in Calcutta, is not liable to pay the license tax imposed by s. 87 and the second schedule of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888). The business of insurance is not one of the occupations mentioned in the second schedule of the Act, and s. 87 only imposes the tax upon persons who exercise some or one of the professions, trades or callings mentioned in that schedule. The words of the section limit its operation to "persons," which expression includes joint-stock companies who exercise the particular occupations prescribed in the schedule. The Standard Marine Insurance Company is not liable to be taxed, as keepers of a place of business, under class VI of the second schedule of the above Act, because its business is carried on in Calcutta by its agents at their own offices, and the Company has no place of business of its own at all in Calcutta. CORPORATION OF CALCUTTA *v.* STANDARD MARINE INSURANCE COMPANY.

[22 Calc. 581

——, **ss. 117 and 119.**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.

[23 Calc. 835

——, **s. 335.**—*Date of taking out license.*] In a case where the owner of a cowshed delayed taking out a license under s. 335 of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888), until the end of the month of May and was prosecuted for keeping an unlicensed cowshed:—*Held*, that under the section as it stands there is nothing to compel a licensee to take out his license before 1st June in every year. AUKHOY CHANDRA HATI *v.* CALCUTTA MUNICIPAL CORPORATION.

[24 Calc. 360

CARRIERS.

See RAILWAY COMPANY.

[17 Mad. 445
[19 Bom. 165

CARRIERS ACT (III of 1865).

See RAILWAY COMPANY.

[17 Mad. 445

——, **ss. 6 and 8.**—*Negligence—Accident, Loss by—Special contract—Suit for damages.*] The plaintiffs delivered to the defendants certain goods for carriage to Calcutta in a flat belonging to the defendants. The goods were carried under the terms of a special contract or "forwarding note," signed by the shipper. One of the conditions of the forwarding note was as follows:

CARRIERS ACT (III OF 1865)—*concluded.*

"The Company will not be under any liability for damages or compensation in respect of loss of, or damage to, goods....., except such liability as they are or may be subject to under the provisions of any law for the time being in force or of any contract other than this for the time being in existence between the Company and the shipper." While on board the defendants' flat, the goods were destroyed by fire. At the trial of the case, the defendants gave evidence showing the state of things before the fire occurred, the circumstances leading to the discovery of the fire (but not the cause or origin of it), and the measures taken to extinguish the fire:—*Held*, that the occurrence of a fire, under the circumstances disclosed in the case, without any explanation as to the origin of it, was, of itself, evidence of negligence:—*Held*, also, reversing the decision of SALE, J., that the defendants had not discharged the onus cast upon them by law of showing that there was no negligence. *Central Cachar Tea Company* v. *Rivers Steam Navigation Company*, I. L. R. 24 Calc. 787 note, explained. *Held*, on the construction of the above clause (*per* SALE, J., in the Court below, and *per* TREVELYAN, J., in the Court of Appeal) that the words "in any law for the time being in force" must be taken to refer not to the common law, but to the law as laid down in the Carriers Act (III of 1865), and that, unless their liability was enlarged by express contract, the defendant Company were liable only for loss or damage of which under s. 6 of that Act they were not allowed to relieve themselves, that is, only for loss occasioned by the negligence or criminal acts of themselves, their servants or agents. The decision of HILL, J., in *Central Cachar Tea Co.* v. *Rivers Steam Navigation Co.*, unreported, followed. *Semble* on appeal (*per* MACPHERSON, J., MACLEAN, C.J., doubting) that the above construction of the clause was correct. CHOUTMULL DOOGUR *v.* RIVERS STEAM NAVIGATION COMPANY.

[24 Calc. 786

CARRYING ON BUSINESS.

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[18 Bom. 294

[L. R. 21 I. A. 13

CASTE.

See HINDU LAW—CUSTOM—CASTE.

[17 Mad. 222

See HINDU LAW — CUSTOM — IMMORAL CUSTOMS.

[17 Mad. 479

See CASES UNDER JURISDICTION OF CIVIL COURT—CASTE.

See RIGHT OF SUIT—CASTE QUESTIONS.

[18 Bom. 116

——, Outcasting member of.

See DEFAMATION.

[22 Calc. 46

CATTLE STRAYING ON RAILWAY.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT.

[18 Mad. 228

CATTLE TRESPASS ACT (I OF 1871).

See REVISION—CRIMINAL CASES—GENERALLY.

[19 Mad. 238

——, s. 20.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 300, 442

1.—s. 20.—*Criminal Procedure Code* (1882), *s.* 560—*Frivolous and vexatious complaint—Complaint of wrongful seizure of cattle—"Offence."*] A complaint of the wrongful seizure of cattle is not a complaint of an offence within the meaning of the Code of Criminal Procedure. Consequently, on the dismissal of such a complaint, it is not competent to a Court to act under s. 560 of the Code and award compensation to the persons against whom the complaint is made. *Pitchi* v. *Ankappa*, I. L. R. 9 Mad. 102; *Kottalanada* v. *Muthaya*, I. L. R. 9 Mad. 374; *Kala Chand* v. *Gudadhur Biswas*, I. L. R. 13 Calc. 304; and *Nedaram Thakur* v. *Joonab*, I. L. R. 23 Calc. 248, referred to. MEGHAI *v.* SHEOBHIK.

[18 All. 353

2.—s. 20, and ss. 22 and 23.—*Criminal Procedure Code* (1882), *s.* 4 (*p*), *and Chap. XXII—Illegal seizure of cattle—"Offence"—Summary trial.*] The illegal seizure of cattle alluded to in ss. 20 to 23 of the Cattle Trespass Act (I of 1871) is not an "offence" under s. 4 (*p*) of the Criminal Procedure Code, and cases connected therewith are accordingly not triable by the summary procedure described in Chap. XXII of that Code. *Pitchi* v. *Ankappa*, I. L. R. 9 Mad. 102; and *Kottalanada* v. *Muthaya* I. L. R. 9 Mad. 374, followed. NEDARAM THAKUR *v.* JOONAB.

[23 Calc. 248

——, s. 22.

See APPEAL IN CRIMINAL CASES—ACTS—CATTLE TRESPASS ACT.

[19 Mad. 238

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 300, 442

1.—s. 22.—*Illegal seizure of cattle—Theft—Compensation—Fine—Imprisonment in default of payment of compensation—Criminal Procedure Code* (1882), *s.* 386—*Penal Code, s.* 378.] An accused was found to have loosed the complainant's cattle at night from a cattle pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release. He was proceeded against under Act I of 1871 (Cattle Trespass Act), and under the provisions of s. 22 ordered to pay com-

CATTLE TRESPASS ACT (I OF 1871)—*concluded.*

pensation to the complainant, and in default to undergo one month's rigorous imprisonment:—*Held*, that s. 22 was inapplicable to the facts of the case, and that the order must be set aside. On the facts it was not a case of "illegal seizure and detention" of cattle, but rather one of theft, as all the elements of that offence were present, and the accused should have been charged with and tried for that offence:—*Held*, further, that the sentence of imprisonment in default of payment of the compensation was not warranted by law. Compensation may be levied as a fine, and the ordinary mode of levying fines is laid down in s. 386 of the Code of Criminal Procedure. The law nowhere provides that fines may be levied by means of imprisonment. PARYAG RAI *v.* ARJU MIAN.

[22 Calc. 139

2.—s. 22.—*Compensation awarded under Cattle Trespass Act—Imprisonment in default of payment.*] Imprisonment cannot be inflicted in default of payment of the compensation awarded under the Cattle Trespass Act. QUEEN-EMPRESS *v.* LAKSHMI NAYAKAN.

[19 Mad. 238

——, s. 23.

See s. 20.

[23 Calc. 248

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[18 Bom. 327

See COPYRIGHT.

[19 Bom. 557

See EJECTMENT, SUIT FOR.

[19 All. 541

See FOREIGN COURT, JUDGMENT OF.

[22 Calc. 222

[L. R. 21 I. A. 171

See HUNDI.

[20 Bom. 133

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[24 Calc. 260

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

See JURISDICTION OF CIVIL COURT—CASTE.

[21 Calc. 463

See LIMITATION ACT, ART. 14.

[18 Bom. 244

See LIMITATION ACT, ART. 60.

[18 Mad. 390

See LIMITATION ACT, ART. 115.

[19 Mad. 391

CAUSE OF ACTION—*concluded.*

See LIMITATION ACT, ART. 138.

[17 Mad 89

See LIMITATION ACT, ART. 141.

[21 Bom. 376

See MAMLATDAR, JURISDICTION OF.

[20 Bom. 491

See MISJOINDER OF PARTIES.

[22 Calc. 833

See MULTIFARIOUSNESS.

[16 All. 279

[18 All. 131

[24 Calc. 831

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[21 Calc. 157

[L. R. 20 I. A. 155

[17 Mad. 122

[16 All. 165

[18 Bom. 537

See CASES UNDER RES JUDICATA—CAUSE OF ACTION.

See CASES UNDER RIGHT OF SUIT.

See SPECIFIC PERFORMANCE.

[20 Mad. 19

See VARIANCE BETWEEN PLEADING AND PROOF.

[18 All. 403

—— **Dismissal of suit for want of.**

See REMAND—POWER OF REMAND.

[20 Mad. 25

——, **Survival of.**

See ABATEMENT OF SUIT—SUITS.

[20 Bom. 549

See RIGHT OF SUIT—SURVIVAL OF RIGHT.

[22 Calc. 92

CAUSING DEATH BY NEGLIGENCE.

—*Penal Code (Act XLV of* 1860), *s.* 304*A*—*Lessee of Government ferry allowing unsound boat to be used on ferry.*] The lessee of a Government ferry having the exclusive right of conveying passengers across a certain river at a particular spot allowed an unsound boat to be used at the ferry. In consequence of its unsoundness the boat sank while crossing the river, and some of the persons in it were drowned:—*Held*, that the lessee of the ferry was properly convicted of the offence provided for by s. 304A of the Penal Code. QUEEN-EMPRESS *v.* BHUTAN.

[16 All. 472

CEREMONIES.

See MAHOMEDAN LAW—PRE-EMPTION—CEREMONIES.

CERTIFICATE OF ADMINISTRATION.

		Col.
1.	Certificates under Bombay Regulation VIII of 1827	... 133
2.	Right to sue or execute decree without Certificate	... 133
3.	Issue of, and Right to, Certificate	... 137
4.	Nature and Form of Certificate	... 138
5.	Procedure	... 138
6.	Effect of Certificate	... 139
7.	Cancelment or Recall of Certificate	... 139

See CASES UNDER APPEAL—CERTIFICATE OF ADMINISTRATION.

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—GENERALLY.

[20 Bom. 76

(1) CERTIFICATES UNDER BOMBAY REGULATION VIII OF 1827.

1.—*Right of suit—Suit to establish title under will.*] A plaintiff can sue to establish his title under a will without producing a certificate under Regulation VIII of 1827. *Mulchand* v. *Motichand Hargovandas*, 9 Bom. H. C. A. C. 31, distinguished. MAFATLAL *v.* BAI PARSON.

[19 Bom. 320

2.—*Application for certificate of heirship based on adoption—Procedure.*] *H* applied under Bombay Regulation VIII of 1827 to a District Judge for a certificate of heirship to a deceased *D*, under a registered deed of adoption by his widow executed nearly fifty years after *D's* death. The opponent claimed to be the heir, and denied the legality of the adoption. The District Judge referred the applicant to a regular suit to establish the validity of his adoption:—*Held*, in appeal, that the District Judge was bound to investigate the case, following the procedure laid down in s. 4 of Regulation VIII of 1827, and had no authority to dismiss the application and refer the applicant to a regular suit to establish the validity of the adoption. HARISING DEVISINGRAO *v.* BHAUSING.

[20 Bom. 548

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

3.—*Succession Certificate Act (VII of 1889), s. 4—Act XXVII of 1860, s. 2—General Clauses Consolidation Act (I of 1868), s. 6—Transfer of Property Act (IV of 1882), s. 88—Procedure—Suit for sale on a mortgage—Suit by representative of deceased mortgagee—Production of certificate of succession a condition precedent to decree.*] Section 4 of Act VII of 1889 made no change in the substantive law, but enacted merely a rule of procedure. Inasmuch, therefore, as "no one has a vested right in any particular form of procedure," the abovementioned section is applicable to suits instituted before the coming into force of Act No. VII of 1889. *Ganga Sahai* v. *Kishen Sahai*, I. L. R. 6 All. 262, followed; *Republic of Costa Rica* v. *Erlanger*, L. R. 3 Ch. D. 69; *Warner* v. *Murdoch*, L. R. 4 Ch. D. 752; and *Wright* v. *Hale*, 6 H. & N. 227, referred to. Section 4 of the Succession

CERTIFICATE OF ADMINISTRATION —*continued.*

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

Certificate Act (VII of 1889) applies to suits for sale under s. 88 of the Transfer of Property Act, 1882. *Ammanna* v. *Gurumurthi*, I. L. R. 16 Mad. 64, distinguished; *Kanchan Modi* v. *Baijnath Singh*, I. L. R. 19 Calc. 336, dissented from. FATEH CHAND *v.* MUHAMMAD BAKHSH.

[16 All. 259

4.—*Succession Certificate Act (VII of 1889), s. 4 (b)—Execution of decree—Application for execution made before production of certificate.*] In cases where a certificate of succession is required before execution of a decree can be taken out, all that is necessary is that the certificate should be produced before an order for execution can be made. It is not necessary that the certificate should be produced along with the application for execution. *Brojo Nath Surma* v. *Isswar Chandra Dutt*, I. L. R. 19 Calc. 482; and *Mangal Khan* v. *Salim-ullah*, Weekly Notes All. (1893) 197, referred to. KALIAN SINGH *v.* RAM CHARAN.

[18 All. 34

5.—*Succession Certificate Act (VII of 1889), s. 4—Application for execution not accompanied by certificate.*] Though under certain circumstances a Court may be prohibited by Act VII of 1889 from granting execution of a decree unless a certificate of succession as provided by the Act is produced before it, it does not, therefore, follow that under such circumstances an application for execution is a bad application because it is unaccompanied by a certificate. *Brojo Nath Surma* v. *Isswar Chandra Dutt*, I. L. R. 19 Calc. 482, followed. MANGAL KHAN *v.* SALIM-ULLAH KHAN.

[16 All. 26

6.—*Succession Certificate Act (VII of 1889), ss. 4 and 17—Foreign Court, Proceedings of—Probate issued from Native Court in Cutch—Certificate of Political Agent—Suit in British India.*] A suit in British India by the executors of the will of a native of Cutch was dismissed, on its appearing that the plaintiffs were furnished only with probate issued from a Native Court, of which they produced a copy certified by the Political Agent of Cutch, and since stamped in accordance with the Court-Fees Act, 1870:—*Held*, that the plaintiffs were not entitled to a decree without taking out probate or letters of administration in British India under Act V of 1881 or a certificate under Act VII of 1889, but instead of dismissing the suit, the Court should have allowed time for the plaintiffs to have so completed their title to sue. MANASING *v.* AMAD KUNHI.

[17 Mad. 14

7.—*Succession Certificate Act (VII of 1889), s. 4—Suit by surviving partner and heir of deceased partner—Suit on promissory note by surviving partner of firm—Parties—Right of suit—Contract Act (IX of 1872), s. 48.*] In a suit on a promissory note made by the defendant in favour of two Hindus carrying on business in partnership, it appeared that one of the partners was dead, and no succession certificate or letters of administration

CERTIFICATE OF ADMINISTRATION —*continued.*

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

had been obtained. The plaintiffs were the surviving partners and the undivided sons of the deceased partner:—*Held*, that a surviving partner can sue alone for the recovery of a partnership debt:—*Held*, further, that such a suit may be maintained by a surviving partner jointly with the heir of the deceased partner, in which case a certificate of heirship will be necessary, unless it appears on the face of the documents sued on that the debt is a coparcenary debt. VIDYANATHA AYYAR *v.* CHINNASAMI NAIK.

[17 Mad. 108

8.—*Succession Certificate Act (VII of 1889)—Landlord and tenant—Suit by surviving partners of firm for rent—Right of suit.*] A certain firm mortgaged with possession its immoveable property to two other firms trading jointly, who let out the property to the mortgagor firm. Afterwards some of the partners of the mortgagee firms having died, the surviving partners and the sons of the deceased brought a suit against the mortgagor firm to recover rent which accrued due after the deaths of the deceased partners. The Judge held that the plaintiffs could not proceed with the suit without a certificate under the Succession Certificate Act (VII of 1889):—*Held* reversing the order, that as the rent sued upon became due after the deaths of the deceased partners, it formed no part of their estates at the time of their respective deaths, and no certificate was, therefore, necessary under the Succession Certificate Act. RANCHORDAS NATHUBHAI *v.* BHAGUBHAI PARMANANDAS.

[18 Bom. 394

9.—*Succession Certificate Act (VII of 1889), s. 4—Suit on mortgage-bond by heir—Suit continued by party substituted for plaintiff who has taken out certificate.*] A mortgage-bond was executed by the defendant in favour of *H*, who died, leaving two sons, *J* and *S*, the elder of whom, *J*, took out a certificate to collect the debts of his father, and instituted a suit on the bond in which he asked both for sale of the mortgaged property and for a personal decree against the defendant. Whilst the suit was pending, *J* died, and *S* was allowed to be substituted in his place as plaintiff. A decree was made for sale of the property, but the personal relief was not granted, as it was held to be barred by lapse of time:—*Held*, that this was not "a decree against a debtor for payment of his debt" within the meaning of s. 4 of the Succession Certificate Act (VII of 1889). *Roghu Nath Shaha* v. *Poresh Nath Pundari*, I. L. R. 15 Calc. 54; and *Kanchan Modi* v. *Baij Nath Singh*, I. L. R. 19 Calc. 336, approved. This suit was therefore maintainable notwithstanding that no certificate had been taken out by *S*. *Semble*—It is doubtful whether that Act would apply at all to the case of a person who has been substituted as plaintiff for one who, having taken out a certificate, has died pending the suit. BAIDNATH DAS *v.* SHAMANAND DAS.

[22 Calc. 143

CERTIFICATE OF ADMINISTRATION —*continued.*

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

10.—*Succession Certificate Act (VII of 1889), s. 4, sub-section (2)—Debt—Unliquidated claim.*] *X*, a Hindu, left some sheep with *Y*, who failed to return them. *X* having died, his widow applied for a succession certificate to enable her to sue *Y* for damages for wrongful detention of the sheep:—*Held*, that no debt was owing by *Y* to *X* within the meaning of the Succession Certificate Act, s. 4, sub-section (2), and therefore no certificate was necessary to enable his widow to sue *Y*. SUBBANNA *v*, MUNEKKA.

[18 Mad. 457

11.—*Succession Certificate Act (VII of 1889), s. 4—Collection of debt on succession—Certificate of heirship—Act XXVII of 1860, s. 2—Right of succeeding trustee to collect.*] In a suit brought by a widow who had succeeded her husband as trustee of an endowment for a debt due thereto:—*Held*, that she was not suing as being entitled to the effects of her deceased husband, or for payment of a debt due to the estate which had been his, but that she was suing as representing the endowment in the capacity of a trustee of its money. Accordingly, neither Act XXVII of 1860, s. 2, nor Act VII of 1889, s. 4, was applicable to her claim, and the fact of her not having obtained a certificate of heirship to her husband's estate did not disentitle her to a decree. YARLAGADDA MALLIKARJUNA *v.* MAKEBLA SRIDEVAMMA.

[20 Mad. 162
[L. R. 24 I. A. 73

12.—*Succession Certificate Act (VII of 1889), s. 4—Joint family property—Suit for family debt by right of survivorship.*] Under the Succession Certificate Act (VII of 1889), a plaintiff does not require a certificate where his claim is for family property by right of survivorship. JAGMOHANDAS KILABHAI *v.* ALLU MARIA DUSKAL.

[19 Bom. 338

13.—*Succession Certificate Act (VII of 1889), s. 4—Joint Hindu family—Suit by survivor for debt due to joint family—Survivorship.*] Where a debt is advanced from the funds of a joint Hindu family and is due to that family, no certificate under Act VII of 1889 is necessary to enable the survivor of such family to recover the said debt. *Jagmohandas Kilabhai* v. *Allu Maria Duskal*, I. L. R. 19 Bom. 338, followed. PATESHURI PARTAP NARAIN SINGH *v.* BHAGWATI PRASAD.

[17 All. 578

14.—*Succession Certificate Act (VII of 1889), s. 4—Survivorship—Letters of administration—Hindu law, Joint family—Revival of suit—Civil Procedure Code, s. 372.*] On the death of the plaintiff, his sons, who were members of a joint Hindu family, governed by the Mitakshara law, of which their father, the deceased plaintiff, was a managing member, applied for the revival of the suit:—*Held*, that it was not necessary that either letters of administration, or a certificate under Act VII of 1889, should be obtained in order to

CERTIFICATE OF ADMINISTRATION —*continued.*

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*concluded.*

entitle the applicants to ask that they may be permitted to proceed with the suit. BEEJRAJ *v.* BHYROPERSAUD.

[23 Calc. 912

15.—*Succession Certificate Act* (*VII of* 1889); *s.* 4 —*Suit for debt due to Hindu family jointly.*] In a suit by the members of a joint Hindu family for a debt due on a document executed in favour of a deceased member of the family, the plaintiffs need not produce a certificate under the Succession Certificate Act, if they can prove that the debt was due to the family jointly. *Quære*—Whether a plaintiff, in a suit to recover money by the sale of property mortaged, need produce a certificate under the Succession Certificate Act. SUBRAMANIAN CHETTI *v.* RAKKU SERVAI.

[20 Mad. 232

16.—*Succession Certificate Act* (*VII of* 1889), *s.* 4—*Curator—Act XIX of* 1841.] A curator appointed under the Curators Act (XIX of 1841) is not a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage, and is not required to take out a certificate under s. 4 of the Succession Certificate Act (VII of 1889) before he can obtain a decree. BABASAB *v.* NARSAPPA.

[20 Bom. 437

(3) ISSUE OF, AND RIGHT TO, CERTIFICATE.

17.—*Representative of a deceased person—Person claiming to be entitled to the effects of the deceased —Purchaser at sale in execution of a decree against a deceased person—Succession Certificate Act* (*VII of* 1889), *s.* 4.] A certain debt due to *P* (deceased) was sold in execution of a decree against him and was purchased by *M*. In order to enable him to recover the said debt, *M* applied to the District Judge for a certificate under the Succession Certificate Act (VII of 1889). The Judge rejected the application on the ground that the applicant was not a representative of the deceased:—*Held*, reversing the decree, that the applicant having purchased at the auction sale the debt as part of the deceased's effects, which was sold as such by the Court, was entitled to a certificate under s. 4 (*a*) of the Succession Certificate Act. MANCHARAM PRANJIVAN *v.* BAI MAHALI.

[18 Bom. 315

18.—*Succession Certificate Act* (*VII of* 1889), *s.* 1, *cl.* 4—*Right to certificate under will—Validity of will—Hindu Wills Act* (*XXI of* 1870.] Clause 4 of s. 1 of the Succession Certificate Act (VII o 1889) does not preclude an applicant from obtaining a certificate under the will of the deceased. A will having been held to be genuine in a contest between the parties, and there being no suggestion that the will was one to which the Hindu Will Act (XXI of 1870) applied:—*Held* that the Court could not refuse to grant the certificate. DAVE LILADHAR KASHIRAM *v.* BAI PARVATI.

[18 Bom. 608

CERTIFICATE OF ADMINISTRATION —*continued.*

(3) ISSUE OF, AND RIGHT TO, CERTIFICATE—*concluded.*

(4) NATURE AND FORM OF CERTIFICATE.

19.—*Succession Certificate Act* (*VII of* 1889), *s.* 7—*Grant of certificate not to be partial.*] A District Court acting under s. 7 of Act VII of 1889 must, if there are several applicants, elect to which, if any, a certificate should be granted. It is not competent to such Court to grant separate certificates to different persons for partial collection of the debts in respect of which a certificate is sought. SHITAB DEI *v.* DEBI PRASAD.

[16 All. 21

20.—*Succession Certificate Act* (*VII of* 1889), *s.* 7—*Joint certificates—Adverse claimants.*] It is not illegal to grant a joint certificate to two persons who claim adversely to each other to be entitled to collect the debts due to the estate of the deceased under Succession Certificate Act (VII of 1889). NARAYANASAMI *v.* KUPPUSAMI.

[19 Mad. 497

21.—*Succession Certificate Act* (*VII of* 1889), *s.* 6—*Certificate not necessarily to collect all the debts of the deceased.*] A Court may legally grant to an applicant, under Act VII of 1889, a certificate for the collection of a specified debt or specified debts of a deceased person. The Court is not bound to grant a certificate only for the collection of the whole of the debts of the deceased. IN THE MATTER OF THE PETITION OF INDARMAN.

[18 All. 45

22.—*Succession Certificate Act* (*VII of* 1889), *s.* 4—*Application for certificate for collection of part only of a debt.*] A certificate for collection of debts under Act VII of 1889 may be given for the collection of any one or more separate debts of the deceased, but not for the collection of part only of a debt. Where, however, a portion of a debt in respect of which a certificate is sought has been discharged, it is not necessary for the applicant to pay duty on more than the unsatisfied portion of the debt. MUHAMMAD ALI KHAN *v.* PUTTAN BIBI.

[19 All. 129

(5) PROCEDURE.

23.—*Succession Certificate Act* (*VII of* 1889), *s.* 7 (3)—*Inquiry as to right to certificate—Question of title.*] The intention of sub-clause (3) to s. 7 of the Succession Certificate Act is *not* to save the Court the trouble of making any inquiry at all where the applicant is not heir to the deceased, but it is to allow the *primâ facie* title to the certificate to prevail when a question of law or fact arises on inquiry too difficult to be determined in a summary proceeding. SIVAMMA *v.* SUBBAMMA.

[17 Mad. 477

CERTIFICATE OF ADMINISTRATION —*continued.*

(5) PROCEDURE—*concluded.*

24.—*Succession Certificate Act (VII of 1889), s. 7, sub-section (3)—Inquiry, Nature of—Title, Question of.*] In proceeding under the Succession Certificate Act (VII of 1889), s. 7, sub-section (3), there must be some inquiry into the title set up by the applicant before his application is disposed of. *Kali Koomar Chatterjee* v. *Tara Prosunno Mookerjee*, 5 C. L. R. 517, dissented from; *Surfoji* v. *Kamakshiamba*, I. L. R. 7 Mad. 452, distinguished; *Shitanath Mookerjee* v. *Promothonath Mookerjee*, I. L. R. 6 Calc. 303; *Asgar Reza* v. *Abdul Hossein*, I. L. R. 15 Calc. 574; and *Sivamma* v. *Subbamma*, I. L. R. 17 Mad. 477, referred to. HURRI KRISHNA PANDA *v.* BALABHADRA PANDA.

[23 Calc. 431

25.—*Succession Certificate Act (VII of 1889), s. 7, cl. 1—Obligation of Court to decide the right to the certificate.*] Under cl. 3, s. 7 of the Succession Certificate Act (VII of 1889), the District Court must decide in a summary way an application for a succession certificate even if the question at issue between applicant and opponent be as to the status of the family to which deceased belonged. DHARMAYA SANGAPPA *v.* SAYANA MALAPA.

[21 Bom. 53

(6) EFFECT OF CERTIFICATE.

26.—*Succession Certificate Act (VII of 1889), ss. 17 and 20—Certificate of heirship—Grant of certificate by Political Agent—Irregularities in making grant—Jurisdiction of Civil Court.*] A District Judge cannot treat a certificate of heirship granted by the Political Agent in a Native State as invalid because the applicant had not given to him the requisite information as to the other members of the family, and no notices had been issued to them. These irregularities of procedure may be a reason for the Political Agent to cancel the grant, but they do not enable the District Court to treat it as a nullity. A certificate of heirship stamped with the proper stamp, and granted by the Political Agent of a Native State, must be recognised by the Civil Courts in British India "as having the same effect in British India as a certificate granted under this Act" as provided by s. 17 of Act VII of 1889, and under s. 20 precludes the granting of a certificate by a Civil Court. ANNAPURNABAI *v.* LAKSHMAN BHIKAJI VAKHARKAR.

[19 Bom. 145

(7) CANCELMENT OR RECALL OF CERTIFICATE.

27.—*Succession Certificate Act (VII of 1889), s. 18, cls. (b) and (c)—Certificate granted under mistake, the applicant concealing circumstance which he should have disclosed—District Judge, Jurisdiction of.*] *P* died in 1889, leaving behind him his daughter, *B*. *P*, it was alleged, had made a will appointing certain persons his executors. The executor applied for a certificate under the

CERTIFICATE OF ADMINISTRATION —*concluded.*

(7) CANCELMENT OR RECALL OF CERTIFICATE—*concluded.*

Succession Certificate Act (VII of 1889) to recover a debt due to the deceased's estate from one *N*. *B* opposed this application and claimed the certificate for herself by a separate application. The District Judge rejected *B's* application, and issued a certificate to the executors on 14th September, 1892. In the meantime, one *M* obtained a decree against *B* as legal representative of *P*, and in execution bought *P's* right, title and interest in the debt due from *N*. On 12th September, 1892, *M* applied for certificate, under Act VII of 1889, to recover this debt. The District Judge rejected this application. *M* appealed to the High Court. To this appeal the executors were made parties at their own request. The High Court reversed the District Judge's order and remanded the case for disposal on the merits. Upon the remand the executors did not appear before the District Judge to contest *M's* application, and the District Judge granted him a certificate. Thereupon he applied for revocation of the certificate previously granted to the executors, and the executors in their turn applied for a revocation of the certificate granted to him. The District Judge revoked *M's* certificate on the ground that he had fraudulently concealed from the Court the previous grant of a certificate to the executors:—*Held*, on appeal by *M*, that the District Judge had a right, under s. 18, cl. (*b*) or (*c*), of Act VII of 1889, to revoke the certificate he had granted under a mistake of fact to *M*. MANCHHARAM *v.* KALIDAS.

[19 Bom. 821

CERTIFICATE OF GUARDIANSHIP.

See EVIDENCE ACT, s. 35.

[18 All. 478

See PROBATE—EFFECT OF PROBATE.

[19 Bom. 832

CERTIFICATE OF SALE.

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[21 Calc. 350

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

[19 All. 188

See STAMP ACT, SCH. I, ART. 16.

[18 Bom. 175

CESS.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[21 Calc. 132

——, Sale for arrears of.

See LIMITATION ACT, ART. 12.

[23 Calc. 775

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[23 Calc. 641

CESS—*concluded.*

See PUBLIC DEMANDS RECOVERY ACT, S. 7.

[23 Calc. 775

—*Chowkidari tax—Abwab—Village Chowkidars Act* (*Bengal Act VI of* 1870)—*Suit for arrears of chowkidari tax payable by putnidar under putni settlement—Rent—Bengal Tenancy Act* (*VIII of* 1885), *ss.* 3 (5), *and* 74—*Bengal Regulation VIII of* 1793, *ss.* 54 *and* 55.] In a suit for arrears of *chowkidari* tax, payable by the *putnidar* under the *putni* settlement, the defence was that it was an illegal cess, and could not be legally recovered:—*Held*, that as the payment of the *chowkidari* tax was one of the terms of the *putni* settlement itself, which was entered into between parties competent to contract, and was made for valuable consideration, and the *putni* regulation declares that *putni taluks* "shall be deemed to be valid tenures in perpetuity according to the terms of the engagements under which they are held," and, moreover, as the amount which the *putnidar* agrees to pay as *chowkidari* tax is paid quite as much on account of the occupation of the property as that which is expressly called the rent, and is part of the ground rent quite as much as the latter, it is not an *abwab*, and is, therefore, recoverable. *Surnomoyee Dabee* v. *Koomar Purresh Narain Roy*, I. L. R. 4 Calc. 576, followed; *Tilukdhari Singh* v. *Chultan Mahton*, I. L. R. 17 Calc. 131; and *Radha Prosad Singh* v. *Balkowar Koeri*, I. L. R. 17 Calc. 726, distinguished; *Pudmanund Singh* v. *Baij Nath Singh*, I. L. R. 15 Calc. 828, referred to. ASSANULLA KHAN BAHADUR *v.* TIRTHABASHINI.

[22 Calc. 680

CHAIRMAN OF MUNICIPALITY, POWER OF.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[22 Calc. 717

CHAMPERTY.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

[18 Mad. 374

CHARACTER, EVIDENCE AS TO.

See EVIDENCE—CRIMINAL CASES—CHARACTER.

[23 Calc. 621

CHARGE.

Col.

1. Form of Charge ... 142

——, Alternative charges.

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[18 Bom. 377
[17 All. 436

——, Conviction without.

See CRIMINAL PROCEDURE CODE, S. 238.

[22 Calc. 1006

CHARGE—*continued.*

——, Form of.

See CRIMINAL TRESPASS.

[22 Calc. 391

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[18 Bom. 377
[17 All. 436

See UNLAWFUL ASSEMBLY.

[22 Calc. 276

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749

(1) FORM OF CHARGE.

1.—*Defect in charge—Rioting—Unlawful assembly—Common object. Effect of not stating in charge—Penal Code* (*Act XLV of* 1860), *s.* 147.] Where certain accused persons were convicted of rioting, and it appeared that the charge did not specify any common object, and that neither the judgment of the Original Court, nor that of the Sesssions Judge in appeal, found what was the common object which made the assembly of which the prisoners were members of an unlawful one:—*Held*, that these defects did not vitiate the proceedings, there being ample evidence on the record to prove what the common object of the assembly was, and to justify the conviction for the offence of which the lower Courts had found the accused guilty. BASIRADDI *v.* QUEEN-EMPRESS.

[21 Calc. 827

2.—*Alternative charge—Common object—Rioting—Unlawful assembly—Criminal Procedure Code* (1882), *s.* 236.] Fourteen accused were charged with rioting armed with deadly weapons, and with murder and causing grievous hurt during such riot. The common object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party. Some of the accused, who admitted their presence at the scene of the occurrence, stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife, and that they had merely acted in self-defence. On the close of the case for the prosecution the Sessions Judge, considering that possibly the common object alleged by the prosecution might be considered not to have been proved, amended the charge and added an alternative common object to it, namely, that the object of the assembly was to punish one of the opposite side for enticing away another's wife. There was no evidence on the record to prove the alternative common object, it being based solely on a portion of the statements of some of the accused:—*Held*, that if the Sessions Judge was of opinion that there were grounds for charging the accused with a common object other than that alleged by the prosecution, his proper course was not to amend the charge but to add a separate count or counts to the charge upon which a separate verdict could be taken. Section 236 of the Code of Criminal Procedure only authorises a

CHARGE—*concluded.*

(1) FORM OF CHARGE—*concluded.*

charge in the alternative when it is doubtful which of several offences the facts which can be proved will constitute, and not where there may be a doubt as to the facts which constitute one of the elements of the offence. WAFADAR KHAN *v.* QUEEN-EMPRESS.

[21 Calc. 955

3.—*Criminal breach of trust—Penal Code (Act XLV of 1860), s. 409—Conviction for criminal breach of trust on general deficiency in account.*] An accused person may be charged with criminal breach of trust in respect of a general deficiency, and it is not necessary in all cases to charge the accused with the embezzlement of a particular sum received on a certain date from some particular person. *Reg.* v. *Jones*, 8 C. & P. 288; *Reg.* v. *Chapman*, 1 C. & K. 119; *Reg.* v. *Wolstenholme*, 11 COX. C. C. 313; and *The Queen* v. *Lambert*, 2 COX. C. C. 309, referred to. QUEEN-EMPRESS *v.* KELLIE.

[17 All. 153

4.—*Criminal breach of trust—Penal Code (Act XLV of 1860), s. 409—Conviction for criminal breach of trust on a general deficiency in accounts.*] *Held*, that a person accused under s. 409 of the Indian Penal Code might be legally convicted of the offence defined in the section on proof of a general deficiency in his accounts, and that it was not necessary that the receipt of, and non-accounting for, specific items should be charged and proved against him. *Queen-Empress* v. *Kellie*, I. L. R. 17 All. 153, approved. BUDDHU *v.* BABU LAL.

[18 All. 116

5.—*Criminal breach of trust—Penal Code (Act XLV of 1860), s. 408—Form of indictment—Practice.*] Where the first two counts of an indictment charged the prisoner under s. 408 of the Penal Code with criminal breach of trust in respect of two sums of money, *viz.*, Rs. 23-7 and Rs. 850, respectively, and the third and last count charged him with criminal breach of trust in respect of a sum of Rs. 9,168-6, which last-mentioned sum, as appeared from the depositions, represented a general deficiency in the prisoner's account:—*Held*, the third count must be struck out. QUEEN-EMPRESS *v.* PURSOTAM DASS MORARJEE.

[24 Calc. 193

CHARGE TO JURY.

Col.
1. Misdirection ... 143

——, Omission of.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[23 Calc. 252

(1) MISDIRECTION.

—*Rioting—Unlawful assembly—Common object—Verdict of jury—Alternative common object—Criminal Procedure Code* (1882), *s.* 303.] Fourteen accused were charged with rioting armed with deadly weapons, and with murder and causing grievous hurt during such riot. The common

CHARGE TO JURY—*concluded.*

(1) MISDIRECTION—*concluded.*

object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party. Some of the accused who admitted their presence at the scene of the occurrence stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife, and that they had merely acted in self-defence. The case was tried before a jury, and on the close of the case for the prosecution the Sessions Judge, considering that possibly the common object alleged by the prosecution might be considered not to have been proved, amended the charge and added an alternative common object to it, *viz.*, that the object of the assembly was to punish one of the opposite party for enticing away another's wife. There was no evidence on the record to prove the alternative common object, it being based solely on a portion of the statements of some of the accused, and the Sessions Judge put it to the jury that it was an inference that could possibly be drawn from the evidence, but it was for them to draw that inference or not. The jury convicted all the accused without specifying which common object they relied on, and were not asked, under s. 303 of the Code of Criminal Procedure, any questions for the purpose of ascertaining what their verdict was based on:—*Held*, that the Judge had misdirected the jury, and that the verdict of the jury leaving it uncertain what was the common object which actuated the accused was bad in law, and that the conviction must be set aside and the case retried:—*Held*, further, that it was unfair to use a part of the statements of some of the accused put forward in their defence as justifying the use of force by them in repelling the attack of the opposite party, for the purpose of showing a common object as against them, and that the statements should have been taken in their entirety and could not in any event be used as against the rest of the accused. WAFADAR KHAN *v.* QUEEN-EMPRESS.

[21 Calc. 955

CHARGE-SHEET, COPY OF.

See ACCUSED PERSON, RIGHT OF.

[19 Mad. 14

CHARITABLE BEQUEST.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[18 Bom. 136
[21 Bom. 646

CHARITABLE INSTITUTION.

——, Alienation of management of.

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[19 Mad. 211

——, Application for dedication by trustees of.

See TRUSTS ACT, s. 34.

[18 Mad. 443

CHARITABLE INSTITUTION—*concld.*

——, Suit relating to.

See COSTS—TAXATION OF COSTS.

[20 Bom. 301

CHARITABLE TRUST.

See MAHOMEDAN LAW—ENDOWMENT.

[22 Calc. 619

[L. R. 22 I. A. 76

[18 Mad. 201

See TRUST.

[18 Bom. 551

CHARITIES.

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.

CHEATING.

See BANKERS.

[16 All. 88

CHIEF JUDGE OF SMALL CAUSE COURT, BOMBAY.

——, Decision of, as to compensation for land.

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT.

[18 Bom. 184

CHILD.

See MARRIAGE ACT, S. 68.

[18 Mad. 230

CHILDREN.

See ABANDONMENT OF CHILDREN.

[18 All. 364

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[20 Bom. 571

——, Proof of age, and order of birth of.

See EVIDENCE ACT, S. 32.

[24 Calc. 265

——, Right to custody of.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[19 Mad. 461

CHOTA NAGPORE LANDLORD AND TENURE ACT (BENGAL ACT I OF 1879).

——, s. 39.

See APPEAL—BENGAL ACTS—CHOTA NAGPORE LANDLORD AND TENANT PROCEDURE ACT.

[24 Calc. 249

——, s. 88.

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.

[22 Calc. 467

CHOTA NAGPORE TENURES ACT (BENGAL ACT II OF 1869).

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[22 Calc. 112

CHOWKIDARI TAX.

See CESS.

[22 Calc. 680

CHRISTIANS.

—— in Salsette.

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

——, Native.

See CONVERTS.

[20 Bom. 53

CHURCH.

—Roman Catholic Church—Powers of dharmakartas or headmen—Closing church—Appointment of priest.] The appointment of a committee of headmen or *dharmakartas* in a Roman Catholic Church by the Bishop to assist the Vicar in the secular affairs of the church gives the members of such committee no right to close the church or oust the Vicar, and still less to appoint a priest not under the discipline of and obedience to the Church of Rome. MARIAN PILLAI *v.* BISHOP OF MYLAPORE.

[17 Mad. 447

CIRCULAR ORDER OF HIGH COURT (CRIMINAL).

——, No. 9 of 6th September 1869.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[24 Calc. 429

CIVIL COURT.

See JURISDICTION OF CIVIL COURT.

See MADRAS FOREST ACT, S. 4.

[17 Mad. 193

See PENSIONS ACT, S. 4.

[17 Mad. 193

CIVIL PROCEDURE CODE (ACT VIII OF 1859).

——, s. 210.

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 539

CIVIL PROCEDURE CODE (ACT X OF 1877).

——, s. 326.

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR.

[18 All. 313

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——, Application of

See REVIEW—POWER TO REVIEW.

[19 Bom. 113, 116

——, Chap. XXXIX, Suit under.

See LIMITATION ACT, ART. 159.

[23 Calc. 573

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

[19 Mad. 368

——, s. 2.

See CASES UNDER APPEAL—DECREES.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[18 Mad. 439

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[16 All. 496

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 475

——, s. 11.

See CASES UNDER JURISDICTION OF CIVIL COURT.

——, s. 13.

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[17 Mad. 214

See FOREST ACT, s. 45.

[24 Calc. 504

[L. R. 24 I. A. 33

See MALABAR LAW—JOINT FAMILY.

[17 Mad. 214

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 316

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[19 All. 202

See REMAND—CASES OF APPEAL AFTER REMAND.

[16 All. 252

See CASES UNDER RES JUDICATA.

See RIGHT OF SUIT—FRAUD.

[24 Calc. 546

——, s. 16.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[16 All. 359

See PLEADER—APPOINTMENT AND APPEARANCE.

[16 All. 240

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 16A.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[24 Calc. 449

——, s. 17.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 All. 400

See MUNSIF, JURISDICTION OF.

[19 Mad. 477

See PLEADER—APPOINTMENT AND APPEARANCE.

[16 All. 240

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[19 All. 450

——, s. 18.

See PLEADER—APPOINTMENT AND APPEARANCE.

[16 All. 240

——, s. 19.

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &c.

[21 Calc. 639

[22 Calc. 871

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[16 All. 359

[17 All. 483

——, s. 25.

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWERS OF COURT, &c.

[17 Mad. 309

[18 Bom. 61

——, s. 26.

See MISJOINDER OF PARTIES.

[22 Calc. 833

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

[24 Calc. 385

——, s. 27.

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS.

[20 Bom. 677

——, s. 28.

See PARTIES—PARTIES TO SUITS—SPECIFIC PERFORMANCE.

[19 Mad. 211

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 30.

See ESTOPPEL—ESTOPPEL BY JUDGMENT.
[17 Mad. 214

See MALABAR LAW—JOINT FAMILY.
[17 Mad. 214

See CASES UNDER PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

——, s. 31.

See MULTIFARIOUSNESS.
[16 All. 279
[18 All. 131, 219

——, s. 32.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.
[18 All. 109

See LIMITATION ACT, s. 22.
[17 Mad. 12

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.
[18 All. 109

See PARTIES—STRIKING OFF PARTIES—DEFENDANTS.
[18 All. 53

——, s. 36.

See PLEADER—APPOINTMENT AND APPEARANCE.
[16 All. 240

——, s. 37.

See s. 432.
[19 All. 510

See PLEADER—APPOINTMENT AND APPEARANCE.
[16 All. 240

——, s. 39.

See PLEADER—APPOINTMENT AND APPEARANCE.
[16 All. 240
[20 Bom. 198, 293

——, s. 43.

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 15D.
[20 Bom. 469

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[19 All. 98

See EXECUTION OF DECREE—PROCEEDINGS IN EXECUTION.
[19 All. 98

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See CASES UNDER RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See RES JUDICATA—MATTERS IN ISSUE.
[22 Calc. 692
[19 Mad. 145

See TRUST.
[18 Bom. 551

See WITHDRAWAL OF SUIT.
[17 All. 53

——, s. 44.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.
[16 All. 130

See JOINDER OF CAUSES OF ACTION.
[17 All. 274
[18 All. 256

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[17 All. 533

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.
[16 All. 130

——, Want of leave under.

See LIMITATION ACT, s. 14.
[20 Mad. 48

——, s. 45.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.
[16 All. 359

See MULTIFARIOUSNESS.
[18 All. 131, 219

——, s. 48.

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 4.
[19 Bom. 46

——, s. 50.

See VARIANCE BETWEEN PLEADING AND PROOF.
[18 All. 403

——, s. 51.

See PLAINT—VERIFICATION AND SIGNATURE.
[21 Calc. 60
[L. R. 20 I. A. 139

——, s. 52.

See PLAINT—VERIFICATION AND SIGNATURE.
[18 All. 396

——, s. 53.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.
19 Bom. 303

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See LIMITATION ACT, s. 22.

[18 All. 198

See MULTIFARIOUSNESS.

[18 All. 131, 219, 432

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS.

[22 Calc. 692

See CASES UNDER PLAINT—AMENDMENT OF PLAINT.

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.

[18 All. 198

See PLAINT—VERIFICATION AND SIGNATURE.

[18 All. 396

———, s. 54.

See LIMITATION ACT, s. 4.

[20 Mad. 319

See PLAINT—REJECTION OF PLAINT.

[18 Mad. 338

———, s. 58.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[16 All. 165

———, ss. 80—82, and s. 85.

See CASES UNDER SUMMONS, SERVICE OF.

———, s. 98.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[20 Bom. 541

———, s. 100.

See s. 108.

[23 Calc. 738
[18 All. 241

———, s. 100.—*Dismissal of suit for default—Application to restore suit—Failure to serve notice of application—Second application for issue of notice—Practice—Procedure—Civil Procedure Code* (1882), *s.* 607—*Costs.*] A suit having been dismissed for plaintiff's default, he applied for the restoration of the suit to the file, and a notice was issued to the defendant to show cause why the suit should not be restored. The notice was returned unserved owing to plaintiff's neglect to point out the defendant to the serving officer. The plaintiff having applied for a fresh notice, the Subordinate Judge rejected the application:—*Held*, that the Subordinate Judge had no power to reject the plaintiff's application for a fresh notice. Section 100 of the Civil Procedure Code (Act XIV of 1882), which by s. 647 is made applicable to such a proceeding, only enabled him to order a fresh notice to issue, and, if he thought proper, to order plaintiff to pay the costs occasioned by the necessary postponement. LALLUBHAI VAJERAM *v.* BAI MAGANGAVRI.

[18 Bom. 59

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

———, s. 102.

See APPEAL—DEFAULT IN APPEARANCE.

[20 Bom. 736

1.—s. 102.—*Dismissal of suit for non-appearance of plaintiff—Application under s.* 103 *to set aside order of dismissal—Appearance, What amounts to—Ex-parte decree.*] When the plaintiff's suit came on for hearing his Counsel applied for a postponement. This application was refused, and the plaintiff's Counsel, not being further instructed, left the Court. The suit was then dismissed for want of prosecution. Subsequently the plaintiff made an application under s. 103 of the Civil Procedure Code (Act XIV of 1882) for an order to set the dismissal aside:—*Held*, refusing the application, that the above circumstances amounted to an appearance on the part of the plaintiff. RAMPERTAB MULL *v.* JAKEERAM AGURWALLAH.

[23 Calc. 991

2.—s. 102.—*Suit brought by next friend of minor and struck off for default of appearance—Gross negligence on the part of next friend—English rule of law—Law of equity and good conscience—Civil Procedure Code, s.* 103.] Gross negligence on the part of a next friend in the conduct of a suit brought on behalf of a person under a disability prevents the effect of the bar contained in s. 103 of the Civil Procedure Code to the institution of a fresh suit by such person when the disability has ceased. Where a suit for certain property was brought on behalf of two minors by their next friend, and owing to the gross want of care and diligence on the part of the next friend, the suit was struck off under s. 102 for default of appearance:—*Held*, in a suit afterwards brought by the same plaintiffs on attaining their majority, that the suit was not barred by s. 103 of the Code. The English rule of law on this point as being the law of equity and good conscience was applied by the Court to this case, in the absence of any statutory provision. LALLA SHEO CHURN LAL *v.* RAMNANDAN DOBEY.

[22 Calc. 8

———, s. 103.

See s. 102.

[22 Calc. 8
[23 Calc. 991

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[18 Bom. 429

———, s. 106.

See s. 108.

[18 Bom. 142

———, s. 108.

See APPEAL—DEFAULT IN APPEARANCE.

[19 All. 355

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See APPEAL—ORDERS.

[22 Calc. 981

See BENGAL TENANCY ACT, SCH. III, ART. 6.

[21 Calc. 387

See LIMITATION ACT, S. 5.

[23 Calc. 325

See RES JUDICATA—RELIEF NOT GRANTED.

[24 Calc. 546

See RIGHT OF SUIT—FRAUD.

[21 Calc. 605

[24 Calc. 546

1.—s. 108.—*Effect of setting aside ex-parte decree and reopening the case—Ex-parte decree against one defendant—Application by co-defendant to set aside decree—Civil Procedure Code, s.* 106.] Where a decree is set aside on the application of a defendant against whom it was passed *ex-parte*, the case is not reopened as against a co-defendant who had appeared and defended the suit. MANAKU *v.* SITARAM ATMARAM VAGH.

[18 Bom. 142

2.—s. 108 and s. 100.—*Ex-parte decree—"Appearance," What constitutes.*] A summons was issued to a defendant in a civil suit. The serving officer, being unable to find either the defendant or any person empowered to accept service for him at the address given, affixed a copy of the summons to the outer door of the defendant's house and returned the original to Court. On the day notified in the summons, the case was called on, and upon its being called on a pleader presented himself in Court with a power-of-attorney, executed not by the defendant himself but by a third person on his behalf, and stated that the defendant had no notice of the time fixed for the hearing of the case, and prayed for an adjournment to a date upon which a proper answer to the claim could be filed. The application was refused, but the case was adjourned to the day following. On that date, no one appeared for the defendant, and a decree was passed against him:—*Held*, that there was no appearance on behalf of the defendant within the meaning of s. 100 of the Code of Civil Procedure, and that the decree passed on the adjourned date was therefore an *ex-parte* decree. *Hira Dai* v. *Hira Lal*, I. L. R. 7 All. 538; and *Ram Tahal Ram* v. *Rameshar Ram*, I. L. R. 8 All. 140, referred to. *Fazal Ahmad* v. *Bahadur Singh*, Weekly Notes, All. (1893) 25; *Ganga Das* v. *Indarman*, Weekly Notes (1893) 208; and *Zainulabdin Khan* v. *Ahmed Raza Khan*, I. L. R. 2 All. 67; L. R. 5 I. A. 233, distinguished. CHAUDHRI RAJ KUMAR *v.* JUGAL KISHORE.

[18 All. 241

3.—s. 108, and ss. 100 and 157.—*Ex-parte decree—Defendant not appearing at an adjourned hearing—Act VIII of* 1859, *ss.* 119 *and* 147.] Section 108 of the Code of Civil Procedure (Act XIV of 1882) applies to every case

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

in which a decree is passed *ex parte* against a defendant either under s. 100 by reason of his non-appearance at the first hearing, or under s. 157 by reason of his non-appearance at an adjourned hearing. *Zain-ul-Abdin Khan* v. *Ahmed Raza Khan*, I. L. R. 2 All. 67; L. R. 5 I. A. 233, distinguished. *Sital Hari Banerjee* v. *Heera Lal Chatterjee*, I. L. R. 21 Calc. 269, overruled. JONARDAN DOBEY *v.* RAMDHONE SINGH.

[23 Calc. 738

4.—s. 108 and s. 157.—*Ex-parte decree—Presidency Small Cause Court Act (XV of* 1882), *s.* 37—*New trial—Parties, Non-appearance of.*] There is a distinction made by the Code of Civil Procedure between cases decided *ex parte* in the absence of one of the parties after first hearing, and cases decided in the absence of one of the parties at an adjourned hearing. Chapter VII of the Code relates to the appearance of parties and the consequence of their non-appearance at first hearings, whereas Chap. XIII, of which s. 157 forms a part, contains the procedure for the trial of a suit on an adjournment after the first hearing. Where, therefore, a defendant put in an appearance in the Small Cause Court at the first hearing, and the case was adjourned to a later date for hearing, on which date the case was heard in his absence and a decree given against him, *held*, that such a decree was not one made *ex parte* so as to enable the defendant to obtain the benefit of s. 108 of the Code, but that his only remedy was under s. 37 of Act XV of 1882. SITAL HARI BANERJEE *v.* HEERA LAL CHATTERJEE.

[21 Calc. 269

5.—s. 108 and s. 157.—*Presidency Court of Small Causes—Adjourned hearing—Ex-parte decree.*] A defendant is entitled to avail himself of s. 108 of the Civil Procedure Code (Act XIV of 1882) where an *ex-parte* decree is passed against him at an adjourned hearing. HILDRETH *v.* SAYAJI PIRAJI.

[20 Bom. 380

——, s. 111.

See SET-OFF—GENERAL CASES.

[21 Bom. 126

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—SET-OFF.

[21 Calc. 419

——, s. 115.

See WRITTEN STATEMENT.

[22 Calc. 268

——, s. 121.

See INTERROGATORIES.

[23 Calc. 117

——, s. 125.

See INTERROGATORIES.

[23 Calc. 117

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 129.

See INSPECTION OF DOCUMENTS.

[22 Calc. 891
[19 Bom. 350

See INTERROGATORIES.

[23 Calc. 117

——, ss. 130, 133 and 134.

See INTERROGATORIES.

[23 Calc. 117

——, s. 136.

See APPEAL—DECREES.

[19 Bom. 307

See INSPECTION OF DOCUMENTS.

[22 Calc. 891

——, ss. 147 and 149.

See RAILWAYS ACT, s. 77.

[24 Calc. 306

——, s. 157.

See s. 108.

[21 Calc. 269
[20 Bom. 380
[23 Calc. 738

See APPEAL—DEFAULT IN APPEARANCE.

[20 Bom. 736
[19 All. 355

——, s. 158.

See APPEAL—DEFAULT IN APPEARANCE.

[20 Bom. 736

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

[18 Mad. 131, 466

——, s. 159.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[16 All. 218

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.

[16 All. 218

——, s. 160.

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES.

[17 All. 277

——, s. 174.

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES.

[17 All. 277

——, s. 206.

See s. 258.

[21 Calc. 542

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See APPEAL—DISMISSAL OF APPEAL.

[24 Calc. 759

See CASES UNDER DECREE—ALTERATION OR AMENDMENT OF DECREE.

See LIMITATION ACT, ART. 178.

[21 Calc. 259

See RECEIVER.

[19 Mad. 120
[L. R. 23 I. A. 28

——, s. 209.

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.

[19 All. 174
[24 Calc. 766

See MORTGAGE—REDEMPTION—MODE OF REDEMPTIONS AND LIABILITY TO FORECLOSURE.

[16 All. 269

——, s. 211.

See DECREE—CONSTRUCTION OF DECREE—MESNE PROFITS.

[19 All. 296

See LIMITATION ACT, ART. 109.

[24 Calc. 413

——, s. 212.

See COURT-FEES ACT, s. 11.

[24 Calc. 173

——, s. 214.

See LIMITATION ACT, s. 28.

[20 Mad. 305

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT.

[18 All. 223

——, s. 215.

See APPEAL—DECREES.

[18 Mad. 73

See DECREE—FORM OF DECREE—ACCOUNT.

[20 Mad. 313

——, s. 215A.

See APPEAL—DECREES.

[18 Mad. 73

——, s. 218.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

[22 Calc. 387

——, s. 220.

See COSTS—SPECIAL CASES—PAYMENT INTO COURT.

[21 Bom. 502

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 222.

See COSTS—SPECIAL CASES—PARTITION.

[21 Calc. 904

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[19 All. 174
[24 Calc. 766

——, s. 223.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[23 Calc. 39

See CASES UNDER EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &C.

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[22 Calc. 375, 827

See LIMITATION ACT, ART. 180.

[22 Calc. 921
[24 Calc. 244

——, s. 224.

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &C.

[23 Calc. 480

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.

[20 Mad. 10

——, s. 226.

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &C.

[22 Calc. 764
[23 Calc. 480

——, s. 227.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[24 Calc. 473

See LIMITATION ACT, ART. 122.

[24 Calc. 473

——, s. 230.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[24 Calc. 473

See LIMITATION ACT, ART. 122.

[24 Calc. 473

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[19 Bom. 261

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See LIMITATION ACT, ART. 180.

[22 Calc. 921
[24 Calc. 244

1.—s. 230.—*"Decree for payment of money"—Decree for sale of hypothecated property in a suit on a mortgage.*] A decree for sale of hypothecated property made in a suit for sale upon a mortgage-bond is not a "decree for the payment of money" within the meaning of s. 230 of Act XIV of 1882. *Fateh Chand* v. *Muhammad Bukhsh*, I. L. R. 16 All. 259, distinguished. RAM CHARAN BHAGAT *v.* SHEOBARAT RAI.

[16 All. 418

2.—s. 230.—*Application for execution of decree—Limitation.*] *R N* and others obtained a simple money decree against *R S* and another on the 24th of February, 1881. On the 2nd of May, 1892, previous applications for execution having been unsuccessful, the decree-holders made an application for execution in consequence of which certain property of the judgment-debtors was attached. That application was subsequently struck off by the Court, the attachment being maintained. On the 7th of March, 1893, a further application for execution was made:—*Held* that, whether the application of the 7th of March, 1893, was or was not merely a continuation of the former application of the 2nd of May 1892, execution of the decree was barred by the rule prescribed by s. 230 of the Code of Civil Procedure. RAM NEWAZ *v.* RAM CHARAN.

[18 All. 49

3.—s. 230.—*Application for execution of decree—Limitation—"Subsequent application to execute the same decree"—"Granted," Meaning of—Civil Procedure Code, s.* 235.] The "subsequent application to execute the same decree" mentioned in s. 230 of the Code of Civil Procedure means a substantive application for execution in the form prescribed by s. 235 of the Code. Hence, where an application for execution in accordance with s. 235 of the Code has been made within the period of limitation prescribed by s. 230 and has been granted, that is, execution has been ordered in accordance with the prayer of the decree-holder's application, the right of the decree-holder to obtain execution will not necessarily be defeated if, by reason of objections on the part of the judgment-debtor or action taken by the Court or other cause for which the decree-holder is not responsible, final completion of the proceedings in execution initiated by the application under s. 235 above referred to cannot be obtained within the period limited by s. 230. Further applications of the decree-holder to the Court executing the decree to go on from the point where the execution-proceedings had been arrested and complete execution of his decree would be applications merely ancillary to the substantive application under s. 235 and would not be obnoxious to the bar of s. 230. *Delhi and London Bank* v. *Reilly*, Weekly Notes, All. (1893) 124, overruled. RAHIM ALI KHAN *v.* PHUL CHAND.

[18 All. 482

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 231.

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[17 Mad. 394

See EXECUTION OF DECREE—JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER.

[18 Mad. 464

See LIMITATION ACT, s. 7.

[20 Bom. 383

——, s. 232.

See s. 244—PARTIES TO SUITS.

[16 All. 483

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[16 All. 483

——s. 232.—*Assignment of decree by one of two decree-holders valid.*] There is no prohibition in law against one of several decree-holders assigning his interest under the decree:—*Held*, that the assignee is entitled to execute under s. 232, unless the judgment-debtor can show that such a proceeding is prejudicial to his interest. MUTHUNARAYANA REDDI *v.* BALAKRISHNA REDDI.

[19 Mad. 306

——, s. 234.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 All. 431

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[22 Calc. 558

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

[20 Bom. 385

[16 All. 449

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &c.

[20 Bom. 385

See JUDGMENT—CIVIL CASES.

[19 Bom. 807

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[24 Calc. 778

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 539

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[21 Bom. 424

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 235.

See s. 230.

[18 All. 482

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[21 Calc. 818

[17 Mad. 76

[19 Bom. 34

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—IRREGULAR OR DEFECTIVE APPLICATION.

[23 Calc. 217

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[24 Calc. 778

——, s. 239.

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &c.

[21 Bom. 456

——, s. 244.

Col.

1. Questions in Execution of Decree 161
2. Parties to Suits ... 169

See APPEAL—DECREES.

[16 All. 129

[18 Mad. 26

[24 Calc. 725

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUIT.

[18 Mad. 439

[18 All. 36

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[17 Mad. 394

[16 All. 483

[17 All. 245

See EXECUTION OF DECREE—EXECUTION BY, AND AGAINST, REPRESENTATIVES.

[17 Mad. 58

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

[16 All. 449

[20 Bom. 385

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.

[21 Calc. 989

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 319

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See RES JUDICATA—RELIEF NOT GRANTED.

[24 Calc. 546

See RIGHT OF SUIT—FRAUD.

[21 Calc. 605

[24 Calc. 546

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 789

[24 Calc. 707

See SURETY—ENFORCEMENT OF SECURITY.

[22 Calc. 25

See TRANSFER OF PROPERTY ACT, S. 67.

[22 Calc. 903

(1) QUESTIONS IN EXECUTION OF DECREE.

1.—s. 244.—*Question as to authority to consent to decree—Validity of decree made by consent.*] In proceedings for execution of a decree one of the judgment-debtors opposed the application for execution under s. 244 of the Civil Procedure Code on the ground that the person who was said to have consented to the decree had no authority to consent to it:—*Held*, that this was a question which could not be raised in execution. *Sudindra* v. *Budan*, I. L. R. 9 Mad. 80, approved. DHANI RAM MAHTA *v.* LUCHMESWAR SINGH.

[23 Calc. 639

2.—s. 244.—*Suit against sons of a deceased judgment-debtor — Decree for money against father to be discharged by instalments—Separate suit — Liability of sons for father's debt.*] A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October, 1877. The decree provided for payment of the secured debt in various instalments by May, 1895. The mortgagor died in 1883 having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons. The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews for payment out of the family property of all unpaid instalments, and objection was taken that the question whether ancestral property is liable or not for the father's debt in the present suit was one which related to the execution of the decree in the former suit, and that the order whereby the attachment was raised was an order under s. 244 of the Civil Procedure

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE—*continued.*

Code, and no fresh suit could be brought:—*Held*, that the plaintiff was not precluded from maintaining the suit against the sons of the mortgagor by Civil Procedure Code, s. 244. RAMAYYA *v.* VENKATARATNAM.

[17 Mad. 122

3.—s. 244.—*Separate suit—Uncertified adjustment—Agreement not to execute decree—Suit by judgment-debtor to stay execution—Civil Procedure Code* (1882), *s.* 258.] The defendant, in January, 1887, obtained a decree against the plaintiff, which he partially executed, and thereupon an adjustment of account took place between the plaintiff and defendant, in which a certain sum was found due by the plaintiff to the defendant, for which sum the plaintiff gave a bond to the defendant in consideration of which the defendant agreed to exonerate the plaintiff from liability for the balance due under the decree. This satisfaction of the decree was not certified to the Court. On 12th March, 1890, the defendant applied for further execution of the decree. In a suit for a declaration that the defendant had no right to execute the decree, and for an injunction to restrain him from executing it, it was contended that the suit was barred by s. 244 of the Civil Procedure Code:—*Held*, by PIGOT and MACPHERSON, JJ. (BANERJEE, J., dissenting), that s. 244 is not limited by s. 258, and that the suit was not maintainable. Where a decree is satisfied by an agreement out of Court, and such satisfaction is not certified to the Court, a subsequent suit on the agreement is not maintainable if the object of the suit is to restrain the decree-holder from executing his decree in contravention of the agreement. *Per* PIGOT, J.—Section 244 of the Civil Procedure Code does not absolutely bar a suit, but prohibits in a separate suit between the same parties to a decree any relief being granted which interferes with the conduct of the execution-proceedings by the Court executing the decree. *Per* BANERJEE, J.—A suit on the agreement was maintainable. Section 258 of the Civil Procedure Code having enacted that an uncertified adjustment cannot be recognized as an adjustment of the decree by any Court executing the decree implies that it may be recognized as such by a Court trying the matter as a regular suit. AZIZAN *v.* MATUK LAL SAHU.

[21 Calc. 437

4.—s. 244.—*Question as to payment to decree-holder out of Court—Separate suit—Res judicata—Civil Procedure Code* (1882), *s.* 258.] An order under s. 258 of the Code of Civil Procedure is appealable under s. 244; no separate suit lies since the question is *res judicata* between the parties. GURUVAYYA *v.* VUDAYAPPA.

[18 Mad

5.—s. 244.—*Question as to satisfaction of decree between transferee of decree and judgment-debtor—Civil Procedure Code, s.* 258.] On an ap-

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE—*continued.*

plication for execution of a decree being presented by a transferee decree-holder, the judgment-debtor opposed, alleging in his petition that he had transferred certain immoveable property to the petitioner in consideration of his paying the judgment debt to the original decree-holder, and that the petitioner had discharged the debt, but subsequently having got the decree transferred to himself, instead of entering up satisfaction of the decree, fraudulently applied for execution. Satisfaction had not been entered up under s. 258, Civil Procedure Code:—*Held*, that there must be an inquiry into the truth of the judgment-debtor's allegations, and, if proved, the petition for execution must be dismissed, and, further, that s. 258, Civil Procedure Code, was inapplicable to the present case, since that section applies only to the case of parties who stand in the relation of judgment-debtor and judgment-creditor at the date of the transaction. RAMA AYYAN *v.* SREENIVASA PATTAR.

[19 Mad. 230

6.—s. 244.—*Suit for administration in respect of barred decree—Mortgage-decree—Transfer to High Court for execution—Application for execution by sale—Civil Procedure Code* (1882), *ss.* 227 *and* 230—*Transfer of Property Act* (*IV of* 1882), *ss.* 67 *and* 99—*Limitation Act* (*XV of* 1877), *Sch. II, Arts.* 122, 179 *and* 180.] On the 29th September, 1882, a decree was obtained against the defendant's husband in a suit on a mortgage by the latter, dated the 6th April, 1880. On the 27th July, 1883, an order was made for transfer of the decree to the High Court for execution. On the 8th April, 1886, the mortgagee applied to the High Court for execution by attachment of the mortgaged properties, and in the same year an order for attachment was made. The mortgagee died in April, 1892; and, on the 20th August, 1894, the plaintiff (his widow and administratrix) applied to the High Court for an order absolute for sale of the mortgaged properties under s. 89 of the Transfer of Property Act. On the 5th January, 1895, the application was refused, on the ground that the mortgaged properties were outside the territorial jurisdiction of the High Court. The plaintiff then instituted the present suit, in which she sought (*inter alia*) administration of the estate of the mortgagor (who had died before the mortgage-suit was filed), and asked for the sale of such properties as might be found subject to such mortgage:—*Held* (affirming the decision of SALE, J.), that the suit was not maintainable by reason of the provisions of ss. 230 and 244 of the Civil Procedure Code, the questions arising in the suit being such as should have been determined in execution of the decree, and not by a separate suit. JOGEMAYA DASSI *v.* THACKOMONI DASSI.

[24 Calc. 473

7.—s. 244.—*Question as to the appointment of a manager of the property of a religious institution—Right of appeal.*] A decree of the High Court declared its holder entitled as the *Pandara Sannadhi*, or religious chief, of an *adhinam*, to see that a competent person, from among the *Tambirans* who had received initiation at that institution, was appointed to fill the then vacant office of *Tambiran*, managing certain *maths*. The decree directed that the *Pandara* should name a *Tambiran* of his *adhinam* for the office, whom, after inquiry as to his fitness, the Subordinate Court should appoint. If that Court found him unfit, it was to appoint a *Tambiran* of that *adhinam* upon its own selection. In execution the *Pandara* named a *Tambiran* for the office, but died before the inquiry as to his fitness. His successor, as head of the *adhinam*, petitioned to withdraw the nomination, naming another *Tambiran*. The Subordinate Court made an order disallowing the withdrawal, and, after inquiry as to the fitness of the first-named *Tambiran*, appointed him to the office. The High Court, on the *Pandara's* appeal, decided that the first nomination had been competently withdrawn, and directed an inquiry as to the fitness of the person secondly named, finding on the evidence that the first-named was not fit:—*Held*, on the appeal of the *Tambiran* first-named, that the question as to his right was one that had arisen between the parties to the suit, and related to the execution of the decree, within the meaning of s. 244, sub-section (*c*), Civil Procedure Code, and that he could appeal from the order made. PONNAMBALA TAMBIRAN *v.* SIVAGNANA DESIKA GNANA SAMBANDHA PANDARA SANNADHI.

[17 Mad. 343
[L. R. 21 I. A. 71

8.—s. 244.—*Second suit for restitution of conjugal rights—Decree in former suit not executed—Subsequent voluntary cohabitation followed again by desertion—Satisfaction of decree—Cause of action—Husband and wife.*] Plaintiff obtained a decree against his wife for restitution of conjugal rights in 1885 which was never executed. In 1887, however, she returned to his house, and stayed with him for two months. She afterwards deserted him again. Thereupon the plaintiff filed a second suit for restitution of conjugal rights:—*Held*, that the suit was not barred either under s. 13 or s. 244 of the Code of Civil Procedure (Act XIV of 1882). A second withdrawal from cohabitation constitutes a fresh cause of action. KESHAVLAL GIRDHARLAL *v.* BAI PARVATI.

[18 Bom. 327

9.—s. 244.—*Decree incapable of execution by reason of events subsequent to decree—Decree giving an option to the parties.*] A partition suit brought by a son against his father was referred to arbitration. On the 9th January, 1890, the award was published, and, on the 27th March, 1890, the defendants moved for and obtained a decree in terms of the award. By this decree it was ordered that, in satisfaction of the plaintiff's claim, th

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE —*continued.*

defendant should pay to him Rs. 1,05,000 in the manner therein stated; *viz.*, Rs. 40,000, to be paid forthwith, and the balance of Rs. 65,000 to be paid "upon the plaintiff delivering to the defendant certain specified property, which included two vessels or buglows, called respectively the *Nasri* and *Sambuk*." In no event was defendant to be required to pay the Rs. 65,000 before the 15th November, 1890. At the date of the decree the vessel *Sambuk* was at sea on a voyage, and, on the 18th June, 1890, while still on the voyage, she was lost. On the 15th November, 1890, the plaintiff's attorneys demanded payment of the balance of Rs. 65,000. They offered to deliver the other properties specified in the decree, but stated that the vessel *Sambuk* had been lost. They offered to pay its value, which they estimated at Rs. 1,000. The defendants, however, demanded the delivery of the buglow, which they stated to be worth a very large sum. The defendant having, under the circumstances, refused to pay the Rs. 65,000, the plaintiff applied for execution of the decree, which was refused. He then obtained a rule calling on the defendant to show cause why the decree of the 27th March should not be amended or rectified by stating therein the amount of money to be paid to the defendant as an alternative, if delivery of the vessel *Sambuk* could not be made, such delivery having become impossible. That rule was discharged. The plaintiffs then took out a summons calling on the defendant to show cause why an order should not be made, under s. 244 of the Civil Procedure Code directing the plaintiffs to pay to the first defendant, in lieu of the delivery of the vessel *Sambuk*, such sum of money as might be fixed by the Court as the value of or compensation for the loss of the vessel *Sambuk* in the decree mentioned, and why an order should not be made that on payment of such sum and delivery of the other properties mentioned in the decree which the plaintiffs were to deliver under the decree to the first defendant on payment by the latter to them of Rs. 65,000, the first defendant should pay to the plaintiffs Rs. 65,000 and interest thereon from the 15th day of November, 1890, mentioned in the said decree, and, in the event on its being held that the first defendant was not bound to pay the said sum of Rs. 65,000, then why an order should not be made that the property mentioned in the decree which the plaintiffs were to hand over to the first defendant on payment of Rs. 65,000 should not be retained, used, and appropriated, absolutely by the plaintiffs for their own use and benefit, freed and discharged of all claims on the part of the first defendant, and why the first defendant should not be directed to withdraw the claim made by him to a debt of Rs. 22,00), or thereabouts, mentioned in an affidavit of one Ahmed bin Essa Khaliffa, and why such further or other order as to the Court might seem fit and the justice of the case may require should not be made in the premises and in relation to the properties mentioned in the decree which were to be delivered over by the plaintiffs to the first defendant on receiving from him Rs. 65,000, and why, in the alternative, this suit should not be restored and placed on the board for trial. It was contended by the plaintiff that the questions raised in the summons were questions arising in execution to be dealt with by a Judge in chambers under s. 244 of the Civil Procedure Code (Act XIV of 1882), and that a fresh suit was not necessary:—*Held*, dismissing the summons, that the application was not one in execution of a decree, nor was the question one arising in the course of execution, but that the decree having become incapable of execution, the summons asked the Judge to decide what were the rights of the parties in consequence of its non-execution:—*Held*, also (as to the part of the summons asking for restoration of the suit), that the matters in issue in the suit had been fully heard and determined, and the rights of all parties had been settled by the decree, and consequently there was nothing further to be tried. The Court could not in this suit after passing a decree proceed to ascertain the rights of the parties under a state of facts quite different from those which appeared in the pleadings and arising subsequently to the decree. AHMED BIN SHAIK ESSA KHALIFFA *v.* ESSA BIN KHALIFFA.

[18 Bom. 495

10.—s. 244.—*Suit for property wrongly taken in execution of decree—Right of suit—Question of jurisdiction.*] Under s. 244 of the Civil Procedure Code (Act XIV of 1882), no separate suit will lie for the recovery of lands taken by the decree-holder in excess of the terms of his decree, if the decree-holder has been put in possession of such lands by the officer of the Court executing the decree. *Mudhun Mohun Singh* v. *Kanye Doss Chuckerbutty*, 12 B. L. R. 201, referred to. But where the suit has been instituted in the Court which had jurisdiction to execute the decree, the plaint may be regarded as an application to that Court for determining the question whether the lands are covered by the decree, and the suit does not, therefore fail for want of jurisdiction. *Purmessuree Pershad Narain Singh* v. *Jankee Kooer*, 19 W. R. 90; and *Azizuddin Hossein* v. *Ramanugra Roy*, I. L. R. 14 Calc. 605, referred to and followed:—*Held*, also, that, in such a case, it is incumbent upon the defendant to raise the plea of jurisdiction in the Court of first instance, the question being not a pure question of law, but a question which would depend upon facts. BIRU MAHATA *v.* SHYAMA CHURN KHAWAS.

[22 Calc. 483

11.—s. 244.—*Decree for sale on a mortgage—Mode of intervention of third party claiming an interest by succession in the property decreed to be sold—Civil Procedure Code* (1882), *s.* 278—*Right of suit.*] Two heirs of a Mahomedan woman took possession on her death of certain immoveable property left by her to the exclusion of the third heir, their sister. They mortgaged that property. The mortgagee brought a suit and obtained a

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE —*continued.*

decree for sale. After decree one of the mortgagors died, and his sister was brought upon the record as his representative. The property was sold, and subsequently the sister brought a suit against the auction-purchaser for recovery of her share in the mortgaged property:—*Held*, that s. 244 of the Code of Civil Procedure did not apply, and that the suit was maintainable. *Deefholts* v. *Peters*, I. L. R. 14 Calc. 631; and *Seth Chand Mal* v. *Durga Dei*, I. L. R. 12 All. 313, referred to. SANWAL DAS *v.* BISMILLAH BEGAM.

[19 All. 480

12.—s. 244.—*Question as to whether property belongs to judgment-debtor or not—Grounds of objection to attachment of property - Civil Procedure Code, ss. 278 to 283.*] Where the question is whether the property in dispute belongs to the judgment-debtor or to his estate or not, and the question is raised in a proceeding in execution between parties to the suit or their representatives, it matters not on what grounds the objection is taken to the property being made the subject of execution, and the question is one to be determined in execution, and s. 244 of the Code of Civil Procedure bars a separate suit. *Abidunnissa Khatoon* v. *Amirunnissa Khatoon*, I. L. R. 2 Calc. 327; L. R. 4 I. A. 66, followed. UPENDRA BHATTA *v.* RANGANATHA BHATTA.

[17 Mad. 399

13.—s. 244.—*Claim to attached property—Order in execution-proceedings—Separate suit to declare property not liable to attachment.*] In execution of a decree passed against the plaintiff certain property in his possession was attached. Thereupon he laid claim to the property, on the ground that it was service *vatan*. This claim was rejected. The plaintiff then filed a regular suit for a declaration that the property was not liable to attachment and sale:—*Held*, that the suit was barred under s. 244 of the Code of Civil Procedure (Act XIV of 1882). The Court which originally rejected the plaintiff's claim in the execution-proceedings had jurisdiction to investigate the claim under cl. (*c*) of s. 244 of the Code. TRIMBAK RAMRAO DESHPANDE *v.* GOVINDA.

[19 Bom. 328

14.—s. 244.—*Decree for costs—Sale of immoveable property in execution—Reversal of decree on appeal—Suit for recovery of mesne profits—Suit for value of crops wrongly appropriated—Right of suit—Civil Procedure Code (Act XIV of 1882), s. 583.*] *A* brought a suit against *B* for compensation, but it was struck off, and *B* obtained a decree for costs. *A* appealed, but pending the appeal *B* executed his decree, and in execution thereof, purchased a certain immoveable property of *A*, and took delivery of possession. The Appellate Court remanded the case for retrial on the merits, and a decree was passed by the Court of first instance in *A's* favour, which was confirmed on appeal, and he got back his property. *A* then brought a suit for the value of crops wrongfully appropriated by *B* during the period he was in possession. It was contended on second appeal that such a suit was barred by the provisions of s. 244 of the Civil Procedure Code:—*Held*, that the question to be decided in this suit did not relate to the execution, discharge or satisfaction of the original decree within the meaning of s. 244, because it did not arise at all until that decree had ceased to exist, and such a suit was not barred by the provisions of that section. *Lati Koer* v. *Sobhadra Koer*, I. L. R. 3 Calc. 720; *Mookoond Lal Pal Chowdhry* v. *Mahomed Sami Meah*, I. L. R. 14 Calc. 484; *Hameeda* v. *Bhudhun*, 20 W. R. 238; *Bamasoonduree Dabee* v. *Tarinee Kant Lahooree*, 20 W. R. 415; *Duljeet Gorain* v. *Rewal Gorain*, 22 W. R. 435; *Ram Roop Singh* v. *Sheo Golam Singh*, 25 W. R. 327; *Ram Ghulam* v. *Dwarka Rai*, I. L. R. 7 All. 170, referred to; *Mothoora Pershad Singh* v. *Shumbhoo Geer*, 19 W. R. 413, distinguished. COFFIN *v.* KARBARI RAWAT.

[22 Calc. 501

15.—s. 244.—*Suit for mesne profits subsequent to partition—Separate suit—Right of suit—Decree in suit for partition not giving mesne profits.*] Where a decree for partition is silent about mesne profits subsequent to the institution of the suit, a party is at liberty to assert his right to such profits by a separate suit. Section 244, para. 2, of the Code of Civil Procedure (Act XIV of 1882) expressly reserves such a right of suit. BHIVRAV *v.* SITARAM.

[19 Bom. 532

16.—s. 244.—*Compromise of decree—Effect of compromise—Mode of enforcing agreement of compromise—Right of suit.*] A decree for partition having been compromised by an agreement made by the parties, and communicated to the Court which passed the decree:—*Held*, that the effect of the decree was extinguished by the agreement, which could only be enforced by a fresh suit, and not by an application for execution of the former decree. HARI RAGHUNATH JOSHI *v.* KRISHNAJI ANANT JOSHI.

[19 Bom. 546

17.—s. 244.—*Application to execute decree against alleged representative of deceased judgment-debtor—Civil Procedure Code, s. 234.*] In the case of an application under s. 234 of the Code of Civil Procedure to execute a decree against a person alleged to be the representative of a deceased judgment-debtor, it is for the Court which passed the decree to decide whether the person against whom execution is sought is or is not such representative, but it is for the Court executing the decree to decide to what extent such person is liable as such representative. *Srihary Mundul* v. *Murari Chowdhry*, I. L. R. 13 Calc. 257. SETH SHAPURJI NANABHI *v.* SHANKAR DAT DUBE.

[17 All. 431

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE—*concluded.*

18.— s. 244.—*Objection by representative of party to the suit to the jurisdiction of the Court which passed the decree.*] Section 244 of the Code of Civil Procedure applies as well to a dispute arising between the parties contemplated by that section in relation to the execution of a decree after it has been executed, as it would to a dispute between such parties relating to the execution of a decree before it had been executed. It is competent to the Court charged with the execution of a decree to consider the question as to whether the Court which passed the decree had jurisdiction to pass it, unless the decree itself precludes that question. *Muhammad Sulaiman Khan* v. *Fatima*, I. L. R. 11 All. 314; and *Musa Haji Ahmed* v. *Purmanand Nursey*, I. L. R. 15 Bom. 219, referred to. IMDAD ALI *v.* JAGAN LAL.

[17 All. 478

19.—s. 244.—*Execution of decree against son in Hindu joint family as representative of his father—Question as to legality of debt for which decree was obtained.*] Where a son against whom a decree which has been obtained by his father in a joint undivided Hindu family is sought to be executed as representative of his father takes the objection that the debts are tainted with immorality, he can do so under s. 244 of the Civil Procedure Code (Act XIV of 1882). *Ariabudra* v. *Dorasami*, I. L. R. 11 Mad. 413; and *Lachmi Narayan* v. *Kunjilal*, I. L. R. 16 All. 449, not followed. UMED HATHISING *v.* GOMAN BHAIJI.

[20 Bom. 385

20.—s. 244.—*Suit for contribution against joint judgment-debtor—Separate suit.*] Section 244 of the Code of Civil Procedure does not apply to a suit brought by one of two joint judgment-debtors who has been compelled to satisfy the decree in full against the other joint judgment-debtor for contribution, the liability being one which could not have been decided in execution of decree. RAM SARAN PANDE *v.* JANKI PANDE.

[18 All. 106

(2) PARTIES TO SUIT.

21.—s. 244.—*Representative of party to suit—Mortgagee under a conditional sale-deed who has become owner in pursuance thereof.*] A person who becomes owner by process of law of property mortgaged to him by a deed of conditional sale must be considered as the representative of his mortgagor within the meaning of s. 244 of the Code of Civil Procedure. JANKI PRASAD *v.* ULFAT ALI.

[16 All. 284

22.—s. 244.—*Representative of party to suit—Representative of judgment-debtor—Purchaser of property attached under a simple money-decree.*] A purchaser by private sale of immoveable property from a judgment-debtor is not a representative of the judgment-debtor within the meaning of s. 244 of the Code of Civil Procedure, where the decree against the judgment-debtor is a simple money-decree and creates no charge upon specific property. MADHO DAS *v.* RAMJI PATAK.

[16 All. 286

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(2) PARTIES TO SUIT—*continued.*

23.—s. 244.—*Execution of decree—Transferee of decree—Representative of party to suit—Appeal—Civil Procedure Code* (1882), *ss.* 232, 540 *and* 588.] A person who, within the meaning of s. 232 of the Code of Civil Procedure, is a transferee of a decree is a representative within the meaning of s. 244, *qua* the decree, of the party to the suit under whom he, immediately, or by *mesne* assignment in writing, or by operation of law, has derived title to the decree in the suit. It is the assignment in writing from the decree-holder, and not the recognition by a Court of him as a representative, which makes such transferee a representative of a party to the suit. A Court upon the application of such a transferee for execution of a decree may wrongly decide that he is not a transferee within the meaning of s. 232, or that, although he is a transferee within the meaning of that section, he is not a representative of a party to the suit, or that by reason of limitation he is not entitled to obtain execution of the decree, and if the Court has so decided, it has determined a question or questions mentioned or referred to in s. 244 of the Civil Procedure Code, but not specified in s. 588, and an appeal lies under s. 540 of that Act. *Purmananddas Jiwandas* v. *Vallabji Wallji*, I. L. R. 11 Bom. 506; and *Gulzari Lal* v. *Dayaram*, I. L. R. 9 All. 46, approved; *Ram Bakhsh* v. *Panna Lal*, I. L. R. 7 All. 457, considered; *Halodhar Shaha* v. *Harogobind Das Koiburto*, I. L. R. 12 Calc. 105; *Sambasiva* v. *Srinivasa*, I. L. R. 12 Mad. 511; *Raman* v. *Muppil Nayar*, I. L. R. 14 Mad. 478; and *Vilayati Begam* v. *Intizar Begam*, Weekly Notes, All. 1893, 106, referred to. BADRI NARAIN *v.* JAI KISHEN.

[16 All. 483

24.—s. 244.—*Representative of party to suit—Auction-purchaser who was also assignee of decree.*] In a suit for sale upon a mortgage the plaintiff having obtained a decree assigned the same, and the assignee brought the property decreed to be sold to sale and purchased it himself and obtained possession. A usufructuary mortgagee of the property who had been a party to the suit, and in whose favour the decree was, in so far that it declared his right to continue in possession, applied to be restored to possession and obtained an order in his favour. Thereupon the assignee, auction-purchaser, applied in revision to have the order restoring the usufructuary mortgagee to possession set aside:—*Held*, that the auction-purchaser, though he happened also to be the assignee of the decree, was not a representative of a party to the suit within the meaning of s. 244. SABHAJIT *v.* SRI GOPAL.

[17 All. 222

25.—s. 244.—*Persons made parties to suit, but exempted from operation of decree—Civil Procedure Code* (1882), *s.* 278—*Objection to attachment.*] *Held* that persons who had originally

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(2) PARTIES TO SUIT—*continued.*

been made parties to a suit, but had been expressly exempted from the operation of the decree, were not "parties to the suit" within the meaning of s. 244 of the Code of Civil Procedure with regard to an objection taken by them in respect of the attachment of their property by the decree-holder; but that such objection must be considered to be an objection under s. 278 of the Code. *Jangi Nath* v. *Phundo*, I. L. R. 11 All. 47, referred to. MUKARRAB HUSAIN *v.* HURMAT-UN-NISSA.

[18 All. 52

26.—s. 244.—*Party alleged to have been wrongly substituted in execution-proceedings—Estoppel.*] *A*. executrix to the estate of her husband, executed a mortgage-bond, partly for money due on bonds executed by her husband in his lifetime, and partly for payment of Government revenue due from the estate. She then adopted a son, *B*, under authority granted by the will of her husband. After the adoption a suit was brought on the mortgage-bond against *A*, and a decree was passed in terms of a compromise for payment by instalments, the mortgaged property remaining hypothecated as before. Default was made in payment of the instalments, and the decree-holder applied for execution of the decree from time to time and obtained partial satisfaction. In the meantime the Court of Wards took the management of the estate from *A*, and in the course of execution-proceedings the original decree-holder died, and on an application for execution in August, 1888, *N*, then a minor, was substituted as decree-holder, and *B* was substituted as judgment-debtor in the place of *A*. The present application for execution was made in July, 1893, the minor *N* being represented by a sub-manager under the Court of Wards. It was decided against *N*, and *N* then appealed. An objection was raised that, assuming the liability of the estate of *B*, such liability could not be enforced in execution of this decree, as the order for substitution was unauthorized by law and a mere nullity, and *B*, being neither a party, nor representative of a party, to the suit, the present appeal would not lie under s. 244 of the Civil Procedure Code:—*Held*, that the Court had power to make a substitution of this kind, and that *B* had been rightly substituted. *Hari Saran Moitra* v. *Bhubaneswari Debi*, I. L. R. 16 Calc. 40; L. R. 15 I A. 195, referred to:—*Held*, also, that *B* was precluded by the previous proceedings from questioning the order of substitution. *Mungul Pershad Dichit* v. *Girja Kant Lahiri*, I. L. R. 8 Calc. 51; L. R. 8 I. A. 123; and *Ram Kirpal* v. *Rup Kuari*, I. L. R. 6 All. 269; L. R. 11 I. A. 37, referred to; *Dhuronidhur Sen* v. *Agra Bank*, I. L. R. 4 Calc. 380; I. L. R. 5 Calc. 86, distinguished. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY.

[23 Calc. 374

27.—s. 244.—"*Judgment-debtor*"—*Question of right to possession—Civil Procedure Code* (1882), *ss.* 332 *and* 335.] *T's* predecessor in interest had a mortgage on certain land and was made a party to a partition-suit, in which a share in the land was allotted to a member of the family subject to a proportionate share of *T's* mortgage and also subject to a proportionate share of a certain decree debt. The then plaintiff got his share of the property made over to him. After the date of the decree, *i.e.*, the decree in the partition suit, *T* purchased the equity of redemption in the mortgaged property from certain members of the family. In a subsequent execution of the partition decree, part of the land was sold for money due as costs and mesne profits by *T's* vendors of the equity of redemption, and *T* was ejected. *T* objected under s. 332 of the Code, but the Court refused to order redelivery. In a suit brought by *T* for possession, *held*, that *T* was not a judgment-debtor within the meaning of ss. 244, 332 and 335, Civil Procedure Code, and that the suit was not barred by the provisions of s. 244. *Nagamuthu* v. *Savarimuthu*, I. L. R. 15 Mad. 226, followed. VASUDEVA UPADYAYA *v.* VISVARAJA TIRTHASAMI.

[19 Mad. 331

28.—s. 244.—*Representative of judgment-debtor—Purchaser at execution-sale—Purchaser's right to be heard in support of his objections to the sale.*] The term 'representatives,' as used in s. 244 of the Code of Civil Procedure, when taken with reference to the judgment-debtor, does not mean only his legal representative, that is, his heir, executor or administrator, but it means his representative in interest, and includes a purchaser of his interest, who, so far as such interest is concerned, is bound by the decree. There is no reason for excluding from its signification an execution-purchaser of the judgment-debtor's interest:—*Held*, therefore, by the Full Bench, that the cases of *Gour Sundar Lahiri* v. *Hem Chunder Chowdhury*, I. L. R. 16 Calc. 355; and *Narain Acharjee* v. *Gregory*, 8 W. R. 304, so far as they decide that a purchaser at an auction-sale of the equity of redemption in mortgaged properties cannot come in in execution-proceedings under a decree upon the mortgage as a representative of the judgment-debtor under s. 244 of the Code, are not rightly decided. ISHAN CHUNDER SIRKAR *v.* BENI MADHUB SIRKAR.

[24 Calc. 62

29.—s. 244.—*Representative of a party to the suit—Purchaser of property under attachment in execution of a decree—Objection to execution under Civil Procedure Code, s.* 278.] The purchaser of property which is under attachment in execution of a decree is a representative of the judgment-debtor under that decree within the meaning of s. 244 of the Code of Civil Procedure. *Madho Das* v. *Ramji Patak*, I. L. R. 16 All. 286, referred to. A person to whom s. 244 of the Code of Civil Procedure applies cannot avoid the application of that section by filing his objection to execution under s. 278. *Shankar Dat Dube* v. *Harman & Co.*, I. L. R. 17 All. 245; and *Imdad Ali* v. *Jagan Lal*, I. L. R. 17 All. 478, referred to. LALJI MAL *v.* NAND KISHORE.

[19 All. 332

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(2) PARTIES TO SUIT—*concluded.*

30.—s. 244.—*Issue raised in form of objection by defendant in separate suit.*] Section 244 of the Civil Procedure Code bars a suit brought for the determination of certain questions specified therein, but does not bar the trial of any issue involved in those questions if the issue is raised at the instance of a defendant in a suit brought against him. *Basti Ram* v. *Fattu*, I. L. R. 8 All. 146, distinguished. BHIRAM ALI SHAIK SHIKDAR *v.* GOPI KANTH SHAHA.

[24 Calc. 355

——, **s. 245.**

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[17 Mad. 67

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—IRREGULAR OR DEFECTIVE APPLICATIONS.

[23 Calc. 217

——, **s. 247.**

See SET-OFF—CROSS DECREES.

[16 All. 395

——, **s. 248.**

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[22 Calc. 558

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[20 Bom. 541

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[18 Bom. 224
[22 Calc. 558
[21 Bom. 314

See EXECUTION OF DECREE—NOTICE OF EXECUTION.

[21 Calc. 19

See LIMITATION ACT, ART. 180.

[22 Calc. 921
[24 Calc. 244

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[21 Bom. 424

——, **s. 249.**

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[22 Calc. 558
[21 Bom. 314

——, **s. 250.**

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[21 Bom. 314

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, **s. 251.**

See PENAL CODE, s. 186.

[22 Calc. 596

——, **s. 252.**

See REPRESENTATIVE OF DECEASED PERSON.

[22 Calc. 259

——, **s. 253.**

See SURETY—ENFORCEMENT OF SECURITY.

[22 Calc. 25
[17 All. 99
[19 All. 247

1.—s. 257A.—*Adjustment of decree out of Court—Instalment bond—Consideration—Execution of decree—Right of suit.*] An instalment bond executed by a judgment-debtor in favour of the decree-holder and in consideration of the benefit of the decree being given up, is not void as an agreement falling under s. 257A of the Civ Procedure Code. Such an agreement is void only as far as it effects the right to execute the decree, and may be the foundation of a fresh suit. *Sellamayyan* v. *Muthan*, I. L. R. 12 Mad. 61; *Jhabar Mahomed* v. *Modan Sonahar*, I. L. R. 11 Calc. 671; and *Hukum Chand Oswal* v. *Taharunnessa Bibi*, I. L. R. 16 Calc. 504, followed. JUJI KAMTI *v.* ANNAI BHATTA.

[17 Mad. 382

2.—s. 257A.—*Agreement to give time to the judgment-debtor—Agreement not sanctioned by the Court.*] A judgment-debtor asked for time to pay the decretal amount. The decree-holders agreed to give time on condition that the judgment-debtor gave them a *hundi* for Rs. 1,500, that sum representing a portion of the decree-holder's claim which had been dismissed as barred by limitation. The judgment-debtor gave the *hundi*, but the sanction of the Court was not obtained to the transaction. In a suit by the decree-holders to recover the money secured by the *hundi* given under the circumstances mentioned above, it was *held* that the transaction was one contemplated by s. 257A of the Code of Civil Procedure, and that, as it had not been made with the sanction of the Court, it could not be enforced, and the suit should be dismissed. *Hukum Chand Oswal* v. *Taharunnessa Bibi*, I. L. R. 16 Calc. 504, dissented from. DAN BAHADUR SINGH *v.* ANANDI PRASAD.

[18 All. 435

3.—s. 257A.—*Agreement as to payment of decretal money—Void agreement.*] An agreement between the decree-holder and the judgment-debtor for the satisfaction of a decree by which any sum in excess of the decretal amount is payable, and which has not been sanctioned by the Court which passed the decree, cannot be made the basis of a subsequent suit. *Dan Bahadur Singh* v. *Anandi Prasad*, I. L. R. 18 All. 435; *Ganesh Shivram* v. *Abdulla Beg*, I. L. R. 8 Bom. 538; *Davlatsing* v. *Pandu*, I. L. R. 9 Bom. 176; *Vishnu*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

Vishwanath v. *Hur Patel*, I. L. R. 17 Bom. 499; and *Narayan Deshpande* v. *Kashinath Krishna Mutalik Desai*, I. L. R. 15 Bom. 419, referred to. DALU MALWAHI *v.* PALAKDHARI SINGH.

[18 All. 479

4.—s. 257A.—*Transfer of Property Act (IV of 1882), ss. 88, 89 and 94—Agreement for payment by instalments with enhanced interest—Execution of decree for sale.*] A decree for sale under s. 88 of the Transfer of Property Act, 1882, can only be executed for the amount decreed or found on an account being taken to be due, and the order for sale cannot, except with regard to any additional costs which may be provided for by an order under s. 94, extend in any way the liability of the judgment-debtor or his property under the decree. *Sita Ram* v. *Dasrath Das*, I. L. R. 5 All. 492, distinguished. KASHI PRASAD *v.* SHEO SAHAI.

[19 All. 186

5.—s. 257A.—*Agreement or adjusting satisfying decree—Mortgage-bond in satisfaction of decree—Sanction of mortgage by Court—Sufficiency of sanction.*] Where mortgage-bonds were passed for debts due on decrees, and the execution of the bonds (which had been sanctioned by the Court), and the amounts for which they were passed were certified to the Court, and the Court recorded the adjustment without objection, and the decrees by reason of such adjustment became incapable of execution:—*Held*, that sufficient had been done by the Court to satisfy the requirements of s. 257A of the Civil Procedure Code (Act XIV of 1882), although no formal sanction had been recorded. KRISHNA RAMAYA NAIK *v.* VASUDEV VENKATESH PAI; VASUDEV VENKATESH PAI *v.* MHASTI.

[21 Bom. 808

——[c], s. 258.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[21 Calc. 437
[18 Mad. 26
[19 Mad. 230

See APPEAL—DECREES.

[16 All. 129
[18 Mad. 26

See LIMITATION ACT, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATE.

[19 Mad. 162

See RECEIVER.

[17 Mad. 501
[20 Mad. 224

1.—s. 258.—*Civil Procedure Code Amendment Act (VII of 1888), s. 27—Changes of law relating to procedure—Adjustment or satisfaction of decrees.*] The change effected in the language of s. 258 of the Civil Procedure Code (Act XIV of 1882) by s. 27 of the amending Act (VII of 1888), by which uncertified adjustments can now be recognised by other Courts than the Court executing the decree, applies to adjustments previous to the amending Act. Changes of law relating to procedure have retrospective effect. BALKRISHNA PANDHARINATH *v.* BAPU YESAJI.

[19 Bom. 204

2.—s. 258.—*Inquiry as to satisfaction of decree between judgment-debtor and transferee of decree.*] On an application for execution[c] of a decree being presented by a transferee decree-holder, the judgment-debtor opposed alleging in his petition that he had transferred certain immoveable property to the petitioner in consideration of his paying the judgment debt to the original decree-holder, and that the petitioner had discharged the debt, but subsequently having got the decree transferred to himself instead of entering up satisfaction of the decree, fraudulently applied for execution. Satisfaction had not been entered up under s. 258, Civil Procedure Code:—*Held*, that s. 258, Civil Procedure Code, was inapplicable to the case since that section applies only to the case of parties who stand in the relation of judgment-debtor and judgment-creditor at the date of the transaction. RAMA AYYAN *v.* SREENIVASA PATTAR.

[19 Mad. 230

3.—s. 258.—*Payment not certified to Court—Civil Procedure Code (Act VIII of 1859), s. 206—Decree payable by instalments.*] A decree dated 22nd Cheyt 1295 (18th April, 1882) provided "that the defendants do pay the decretal money as per instalments given below, otherwise the plaintiff will have the power to cancel the instalments and realize the entire amount." The first instalment was made payable on 30th Cheyt 1295 (26th April, 1888), and the other six instalments on the 30th of the months of Magh and Bysack in the three following years. In an application made on 9th February, 1892, for execution of the decree, the decree-holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment-debtors denied having paid any of the instalments. Payment, even if made, had not been certified to the Court:—*Held*, that although under the provisions of s. 258 of the Civil Procedure Code the payment in question, if made, could not be recognised as a payment or adjustment of the decree, yet it was competent to the decree-holder to prove such payment for the purpose of showing that the execution of the decree was not barred. There is no material difference in this respect between s. 258 of the Civil Procedure Code (Act XIV of 1882), and s. 206 of the old Code (Act VIII of 1859), on which the case of *Fakir Chand Bose* v. *Madan Mohan Ghose*, 4 B. L. R. F. B. 130, was decided. HURRI PERSHAD CHOWDHRY *v.* NASIB SINGH.

[21 Calc. 542

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

4.—s. 258.—*Landlord and tenant — Mirasi tenure declared in decree—Subsequent payment of rent by defendants not a payment under decree but under the tenure—Payment not certified to Court.*] The plaintiff sued the defendants to recover possession of certain land. The defendants pleaded they were *mirasi* tenants and entitled to possession as long as they paid the rent. The suit was compromised, and by a consent decree it was declared that the defendants held by *mirasi* tenure, and they were directed to pay rent "as before," or in default the plaintiff should take possession. The plaintiff afterwards applied in execution for possession, alleging that the rent had not been paid. The defendants pleaded that it had been paid, and the plaintiff rejoined that, even if it had been paid, the Court could not recognize the payment, as it had not been certified under s. 258 of the Civil Procedure Code :—*Held*, that under the circumstances the rent, when paid, was to be deemed as paid under the *mirasi* tenure and not under the decree, and therefore s. 258 of the Civil Procedure Code did not apply, and payment need not be certified. KEDARI *v.* GAJAI.

[18 Bom. 690

5.—s. 258.—*Civil Procedure Code* (1882), *s.* 320—*Limitation Act* (*XV of* 1877), *ss.* 19 *and* 20— *Execution transferred to Collector — Acknowledgment in the Court of the Collector of part payment of decretal money.*] Where, after a decree had been sent to the Collector for execution under the provisions of s. 320 of the Code of Civil Procedure, the decree-holder and judgment-debtor joined in an application to the Collector in which they stated, on the one hand, that the decree-holder had received Rs. 2,900 in part payment of the decretal amount, and, on the other, that there was a certain balance due from the judgment-debtor under the decree, and that arrangements had been made between the parties for the payment of such balance :—*Held*, that the above application was properly made to the Collector as being, within the meaning of s. 258 of the Code of Civil Procedure, "the Court whose duty it is to execute the decree," and that the application was a valid acknowledgment for all purposes and sufficient under ss. 19 and 20 of the Limitation Act, 1877, to save limitation in respect of the execution of the decree. MUHAMMAD SAID KHAN *v.* PAYAG SAHU.

[16 All. 228

6.—s. 258.—*Uncertified payment of part of decretal amount - Plea of limitation raised by judgment-debtor.*] Section 258 of the Code of Civil Procedure will not debar a decree-holder from giving evidence of uncertified payments made to him out of Court in partial satisfaction of the decree by the judgment-debtor where the judgment-debtor has, in answer to an application for execution of the decree against him, put forward a plea of limitation. *Fakir Chand Bose* v. *Madan Mohan Ghose*, 4 B. L. R. F. B. 130; *Purmananddas Jiwandas* v. *Vallabdas Wallji*, I. L. R. 11 Bom 506; *Sham Lal* v. *Kanahia Lal*, I. L. R. 4 All. 316; *Zahur Khan* v. *Bakhtawar*, I. L. R. 7 All. 327; and *Hurri Pershad Chowdhry* v. *Nasib Singh*, I. L. R. 21 Calc. 542, referred to. KISHAN SINGH *v.* AMAN SINGH.

[17 All. 42

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

7.—s. 258.—*Civil Procedure Code Amendment Act* (*VII of* 1888), *s.* 27—*Payment not certified to Court—Proof of such payment for the purpose of determining the question of limitation.*] Under s. 258 of the Code of the Civil Procedure (as amended by Act VII of 1888) as there is no time fixed within which the decree-holder is bound to certify a payment made out of Court, such payment may be certified at any time. And although such payment, until certified, cannot be recognized by a Court executing a decree as a payment or adjustment of the decree, it is still open to the Court to take evidence about the payment in order to determine whether an application for execution is barred by limitation. *Hurri Pershad Chowdhry* v. *Nasib Singh*, I. L. R. 21 Calc. 542, followed. TUKARAM *v.* BABAJI.

[21 Bom. 122

——, s. 260.

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[19 Bom. 34

See EXECUTION OF DECREE—MODE OF EXECUTION—DECLARATORY DECREES.

[21 Calc. 784
L. R. 21 I. A. 89

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

[21 Calc. 784
[L. R. 21 I. A. 89

——, s. 262.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[18 Bom. 537

See RES JUDICATA—MATTERS IN ISSUE.

[18 Bom. 537

——, s. 263.

See DECREE—FORM OF DECREE—POSSESSION.

[18 All. 440

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION.

[20 Bom. 351

See POSSESSION—ADVERSE POSSESSION.

[21 Bom. 98

——, s. 264.

See DECREE—FORM OF DECREE—POSSESSION.

[18 All. 440

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 265.

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[23 Calc. 679
[19 Mad. 435
[24 Calc. 725

——, ss. 266–276.

See CASES UNDER ATTACHMENT.

——, s. 266.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[16 All. 443

——, s. 268.

See LIMITATION ACT, s. 15.

[17 All. 198

——, ss. 278–283.

See CASES UNDER CLAIM TO ATTACHED PROPERTY.

——, s. 278.

See s. 244—PARTIES TO SUIT.

[18 All. 52
[19 All. 332

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 Mad. 399
[19 Bom. 328
[19 All. 480

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[17 All. 245

See CRIMINAL PROCEEDINGS.

[18 Bom. 581

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[20 Bom. 403
[21 Bom. 205

See LIMITATION ACT, ART. 11.

[18 Mad. 265

See ONUS OF PROOF—CLAIMS TO ATTACHED PROPERTY.

[18 All. 369

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[16 All. 165

See RES JUDICATA—CAUSE OF ACTION.

[23 Calc. 302

See RES JUDICATA — PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.

[18 All. 413

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See RIGHT OF SUITS—CLAIM TO ATTACHED PROPERTY.

[18 All. 410

See VALUATION OF SUIT—SUITS.

[16 All. 308

——, s. 279.

See ONUS OF PROOF—CLAIMS TO ATTACHED PROPERTY.

[18 All. 369

——, s. 280.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 Mad. 399

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[23 Calc. 829

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[16 All. 165

See RES JUDICATA—CAUSE OF ACTION.

[23 Calc. 302

——, s. 281.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 Mad. 399

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[17 Mad. 17

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[20 Bom. 403
[21 Bom. 205

See LIMITATION ACT, ART. 11.

[18 Mad. 265

——, s. 282.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 Mad. 399

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[18 Bom. 175

e STAMP ACT, SCH. I, ART. 16.

[18 Bom. 175

——, s. 283.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 Mad. 399

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[17 All. 245

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[23 Calc. 829

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 273

See DECLARATORY DECREE, SUIT FOR—ENFORCING OR REMOVING LIEN OR ATTACHMENT.

[17 Mad. 180

See FRAUD—ALLEGING OR PLEADING FRAUD.

[17 Mad. 389

See LIMITATION ACT, ART. 11.

[18 Bom. 260
[18 Mad. 316
[20 Bom. 801

See LIMITATION ACT, ART. 141.

[20 Bom. 801

See ONUS OF PROOF—CLAIMS TO ATTACHED PROPERTY.

[18 All. 369

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[16 All. 165

See RES JUDICATA—CAUSE OF ACTION.

[23 Calc. 302

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

[18 All. 413

See RIGHT OF SUIT—CLAIM TO ATTACHED PROPERTY.

[18 All. 410
[21 Bom. 58

See VALUATION OF SUIT—SUITS.

[16 All. 308
[17 All. 69

——, s. 285.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[21 Calc. 200

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

——, s. 287.

See CLAIM TO ATTACHED PROPERTY.

[18 Bom. 98

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[21 Bom. 701

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[20 Bom. 290

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[20 Bom. 290

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[18 Bom. 175

See STAMP ACT, SCH. I, ART. 16.

[18 Bom. 175

——, s. 290.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[21 Calc. 66
[L. R. 20 I. A. 176

——, s. 291.

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[19 All. 205

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[24 Calc. 291
[20 Mad. 159

——, s. 293.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[18 Mad. 439

See SALE IN EXECUTION OF DECREE—RESALE.

[19 All. 22

——, s. 294.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[18 Mad. 153

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[18 Mad. 153

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 789

——, s. 295.

See COLLECTOR.

[16 All. 1

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWERS OF COURT, &c.

[18 Bom. 61

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[18 Bom. 458

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 305.

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[19 Bom. 539

——, s. 306.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUIT.

[18 Mad. 439

——, s. 307.—*Vacation—Holiday—Days on which the office is open—Office day—Payment of purchase-money for property bought at Court-sale.*] The time during which a Court is closed for the vacation is not a holiday within the meaning of s. 307 of the Civil Procedure Code (Act XIV of 1882). Days on which the office is open, and the purchase-money for property bought at a Court-sale could have been paid, are office days. MOTIRAM RAGHUNATH *v.* BHIVRAJ.

[20 Bom. 745

——, s. 310A.

See APPEAL—ORDERS.

[19 All. 140

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[21 Calc. 940
[22 Calc. 767
[18 Mad. 477

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.

[23 Calc. 393, 396 note

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[19 All. 205

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[20 Mad. 158
[24 Calc. 682

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[23 Calc. 682, 958

——, s. 311.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.

[23 Calc. 351

See RES JUDICATA—RELIEF NOT GRANTED.

[24 Calc. 546

See RIGHT OF SUIT—FRAUD.

[24 Calc. 546

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[19 Bom. 276
[23 Calc. 686
[21 Bom. 424

See SALE IN EXECUTION OF DECREE—INVALID SALES—FRAUD.

[20 Mad. 10

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 707

——, s. 312.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

[18 All. 437

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[16 All. 443

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 316

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[19 Bom. 216

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[24 Calc. 682

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[22 Calc. 802

——, s. 313.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[17 Mad. 228
[18 Bom. 594

——, s. 315.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[17 Mad. 228
[18 Bom. 594

——, s. 316.

See LIMITATION ACT, ART. 136.

[23 Calc. 49

See LIMITATION ACT, ART. 138.

[18 Mad. 144

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See SALE IN EXECUTION OF DECREE—INVALID SALES — DEATH OF JUDGMENT-DEBTOR BEFORE SALE.
[19 Bom. 276

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.
[19 All. 188

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.
[17 Mad. 228

——, s. 317.

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS.

——, s. 318.

See LIMITATION ACT, ART. 138.
[18 Mad. 144

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[24 Calc. 715

——, s. 319.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
18 All. 36

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
[18 Mad. 405

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[24 Calc. 715

——, s. 320.

See s. 258.
[16 All. 228

See COLLECTOR.
[16 All. 1

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.
[18 All. 437

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.
[19 Bom. 216

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.
[18 All. 141

——, ss. 322, 322A and 322B.

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR.
[18 All. 313

——, s. 325.

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR.
[18 All. 313

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 326.

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR.
[18 All. 313

——, ss. 328—335.

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

——, s. 328.

See APPEAL—ORDERS.
[21 Bom. 392

——, s. 331.

See APPEAL—ORDERS.
[22 Calc. 830
[21 Bom. 392

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[18 Bom. 37

See LIMITATION ACT, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.
[20 Bom. 175

——, s. 332.

See s. 244—PARTIES TO SUITS.
[19 Mad. 331

See MAMLATDAR, JURISDICTION OF.
[20 Bom. 351

——, s. 335.

See s. 244—PARTIES TO SUITS.
[19 Mad. 331

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[17 All. 222

——, s. 336.

See SURETY—LIABILITY OF SURETY.
[16 All. 37
[19 Bom. 210

——, s. 341.

See ATTACHMENT—ATTACHMENT OF PERSON.
[23 Calc. 128

——, ss. 344—359.

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

——, s. 349.

See SURETY—ENFORCEMENT OF SECURITY.
[19 Bom. 694

——, s. 357.

See APPEAL—ORDERS.
[16 All. 234

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 357.—*Insolvency—Execution of decree—Limitation.*] Section 357 of the Code of Civil Procedure provides a limitation of its own and in substitution for the limitation provided for the execution of decrees by the Limitation Act, 1877. LALMAN *v.* GOPI NATH.

[19 All. 144

——, s. 361.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[18 Bom. 224

See PARTIES—SUBSTITUTION OF PARTIES—GENERALLY.

[18 Bom. 224

See RIGHT OF SUIT—SURVIVAL OF RIGHT.

[22 Calc. 92

——, ss. 362—372.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[18 Bom. 224

See PARTIES—SUBSTITUTION OF PARTIES—GENERALLY.

[18 Bom. 224

——, s. 365.

See ABATEMENT OF SUIT—APPEALS.

[16 All. 211

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES.

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 102

——, s. 366.

See APPEAL—DECREES.

[17 All. 172

[18 Mad. 496

See APPEAL—ORDERS.

[17 All. 286

——, s. 367.

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

[17 Mad. 209

——, s. 367.—*Dispute as to claim to represent deceased plaintiff.*] *Per curiam* (SHEPHERD and BEST, JJ.).—A dispute within the meaning of Civil Procedure Code, s. 367, need not be between persons claiming to represent the deceased plaintiff. SUBBAYYA *v.* SAMINADAYYAR.

[18 Mad. 496

——, s. 368.

See ABATEMENT OF SUIT—SUITS.

[20 Bom. 548

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[18 All. 156

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 371.

See RIGHT OF SUIT—SURVIVAL OF RIGHT.

[22 Calc. 92

——, s. 372.

See APPEAL—DECREES.

[19 All. 142

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.

[18 All. 86, 285

——, s. 373.

See APPEAL—DECREES.

[16 All. 19

[17 All. 97

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[17 All. 106

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[17 All. 156

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

[21 Bom. 351

See MULTIFARIOUSNESS.

[16 All. 279

See PROBATE—APPLICATION FOR PROBATE.

[19 Mad. 458

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[17 All. 53

See RES JUDICATA—RELIEF NOT GRANTED.

[21 Calc. 265

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

[24 Calc. 129

See CASES UNDER WITHDRAWAL OF SUIT.

——, s. 375.

See APPEAL—DECREES.

[18 Mad. 410

See CASES UNDER COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

——, s. 379.

See COSTS—SPECIAL CASES—PAYMENT INTO COURT.

[21 Bom. 502

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 380.

See SECURITY FOR COSTS—SUITS.

[21 Calc. 177, 832

——, s. 396.

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION.

[19 All. 194

See PARTITION—JURIDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[24 Calc. 725

See PARTITION—NATURE OF PROCEEDINGS.

[22 Calc. 425

——, s. 399.

See PRACTICE—CIVIL CASES—COMMISSION.

[23 Calc. 404

——, s. 400.

See PRACTICE—CIVIL CASES—COMMISSION.

[23 Calc. 404

——, s. 403.

See LIMITATION ACT, s. 4.

[17 All. 526
[18 All. 206

——, ss. 409—414.

See CASES UNDER PAUPER SUIT.

——, s. 409.

See LIMITATION ACT, s. 4.

[17 All. 526
[20 Bom. 508
[18 All. 206
[24 Calc. 889

——, s. 413.

See LIMITATION ACT, s. 4.

[20 Bom. 508
[17 All. 526
[18 All. 206
[24 Calc. 889

——, s. 424.

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom 754

1.—s. 424.—*Bombay Civil Courts Act (XIV of 1869), s. 32—Suit against an officer of Government—Suit ex contractu—Notice of suit.*] Section 24 of the Civil Procedure Code (Act XIV of 882), which requires notice to be given to a ublic officer two months before the institution of suit against him, does not apply where the suit

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

is one *ex contractu*. *Shahunshah Begum* v. *Fergusson*, I. L. R. 7 Calc. 499; and *Maneklal* v. *Municipal Commissioner for the City of Bombay*, I. L. R. 19 Bom. 407, referred to. RAJMAL MANIKCHAND *v.* HANMANT ANYABA.

[20 Bom. 697

2.—s. 424.—*Suit against public officer in respect of acts done by him in his official capacity—Notice of suit—Suit for damages against a public officer—Trespass—Misjoinder of causes of action—Amendment of plaint.*] The plaintiff sued the defendant, a public officer, to recover damages for two distinct acts (*viz.*, wrongful arrest and trespass) alleged to have been illegally and maliciously done by the defendant on two different occasions, and claimed one lump sum as damages for both the acts; no permission to amend the plaint was asked for in the lower Court. On the 21st of October, 1895, the plaintiff instituted this suit, having on the 18th of September, 1895, served the defendant with a notice under s. 424 of the Civil Procedure Code (Act XIV of 1882):—*Held*, that the former act (*viz.*, the plaintiff's arrest) was an act done by the defendant in his official capacity and was clearly of the kind contemplated by s. 424 of the Civil Procedure Code, under which two months' notice to the defendant would be necessary previous to the institution of the suit; and that the suit was rightly dismissed by the lower Court for want of such notice. *Shahunshah Begum* v. *Fergusson*, I. L. R. 7 Calc. 499, distinguished. *Quære*—Whether the latter act (*viz.*, the trespass into the plaintiff's house), on the allegations in the plaint, was an act done by the Magistrate in his official capacity, and whether a notice under s. 424 of the Civil Procedure Code would be necessary previous to suing for damages for such an act:—*Held*, further, that as the two acts were mixed up together in the plaint and one lump sum claimed as damages for both, and as no permission to amend the plaint was asked for in the lower Court so as to convert the suit into one for damages with reference to the trespass only, the plaint ought not to be allowed to be amended on appeal to the High Court. JOGENDRA NATH ROY *v.* PRICE.

[24 Calc. 584

——, s. 431.

See FOREIGN COURT, JUDGMENT OF.

[22 Calc. 222

——, s. 432.—*Suit brought by an Independent Prince—Signature and verification of plaint—"Recognized agent"—Civil Procedure Code* (1882), *s.* 37.] Section 432 of the Code of Civil Procedure was not intended to limit the scope of s. 37 of the Code, and does not prevent the institution of a suit by an Independent Prince in his own name and through a recognized agent other than one appointed under s. 432. *Beer Chunder Manikya* v. *Ishan Chunder Burdhun*, I. L. R. 10 Calc. 136, followed. MAHARAJA OF BHARTPUR *v.* KACHERU.

[19 All. 510

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 433.

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

[21 Bom. 351

——, s. 434.

See FOREIGN COURT, JUDGMENT OF.

[22 Calc. 222

——, s. 435.

See PLAINT—VERIFICATION AND SIGNATURE.

[21 Calc. 60
[L. R. 20 I. A. 139
[16 All. 420

See WRITTEN STATEMENT.

[22 Calc. 268

——, s. 438.

See PARTIES—PARTIES TO SUITS—EXECUTORS.

[19 Bom. 83

——, s. 440.

See OUDE LAND REVENUE ACT, SS. 175 AND 176.

[22 Calc. 729

See WAIVER.

[19 Mad. 127

——, s. 443.

See MINOR — REPRESENTATIVES OF MINOR IN SUITS.

[24 Calc. 25

——, s. 451.

See PRACTICE — CIVIL CASES — PARTY ATTAINING MAJORITY.

[22 Calc. 270

——, s. 462.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[17 All. 531

——, s. 464.

See OUDE LAND REVENUE ACT, SS. 175 AND 176.

[22 Calc. 729

——, s. 470.

See INTERPLEADER SUIT.

[18 Bom. 231

See MUNSIF, JURISDICTION OF.

[20 Mad. 155

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—COMPENSATION FOR ACQUISITION OF LAND.

[20 Mad. 155

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 471.

See INTERPLEADER SUIT.

[18 Bom. 231

——, s. 472.

See INTERPLEADER SUIT.

[18 Bom. 231

——, s. 473.

See INTERPLEADER SUIT.

[18 Bom. 231

——, s. 483.

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.

[16 All. 186
[17 All. 82

——, s. 484.

See ATTACHMENT — ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 273

——, s. 485.

See ATTACHMENT— ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 273

See LIMITATION ACT, S. 15.

[17 All. 198

——, s. 486.

See LIMITATION ACT, S. 15.

[17 All. 198

——, s. 487.

See ATTACHMENT —ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 273

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[20 Bom. 403

——, s. 491.

See COMPENSATION—CIVIL CASES.

[18 Bom. 717

——, s. 492.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.

[23 Calc. 351

See INJUNCTION—UNDER CIVIL PROCEDURE CODE.

[22 Calc. 459

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P

[16 All. 496

——, s. 493.

See CONTEMPT OF COURT.

[19 Bom. 152

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 499.

See INSPECTION OF PROPERTY.

[24 Calc. 117

——, s. 503.

See CASES UNDER RECEIVER.

——, s. 505.

See RECEIVER.

[23 Calc. 517
[18 All. 453
[21 Bom. 328

——, ss. 508–526.

See CASES UNDER ARBITRATION.

——, s. 521.

See APPEAL—ARBITRATION.

[18 All. 422

——, s. 522.

See APPEAL—ARBITRATION.

[18 All. 414, 422
[24 Calc. 469

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[21 Bom. 465

——, s. 524.

See APPEAL—ARBITRATION.

[18 Mad. 423

——, s. 526.

See APPEAL—ARBITRATION.

[18 Mad. 423

——, ss. 532–538 (Chap. XXXIX), Suit under.

See LIMITATION ACT, ART. 159.

[23 Calc. 573

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

[19 Mad. 368

——, s. 539.

See ENDOWMENT.

[18 All. 227

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[19 Bom. 34

See LIMITATION ACT, ART. 134.

[24 Calc. 418

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.

See VALUATION OF SUIT—SUITS.

[19 All. 60

——, s. 540.

See s. 244—PARTIES TO SUITS.

[16 All. 483

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See APPEAL—DECREES.

[18 Mad. 73

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[16 All. 483

——, s. 541.

See PRACTICE—CIVIL CASES—APPEAL.

[16 All. 77

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION.

[17 All. 218

——, s. 544.—*Any ground common to all the plaintiffs or to all the defendants—Appellate Court, Power of.*] Section 544 of the Civil Procedure Code presupposes a common ground of decision affecting property in which both those who have appealed and those who have not appealed have an interest direct or indirect. Thus a District Judge has no power under this section to reverse the decree of a Lower Court, given for a plaintiff, in favour of a defendant who did not appeal, and in respect to property in which the other defendants who did appeal disclaim all interest. *Sriram Ghatak* v *Braga Mohan Ghosal*, 3 B. L. R. App. 41; and *Appa Rau* v. *Ratnam*, I. L. R. 13 Mad. 249, cited and followed; *Seshadri* v. *Krishnan*, I. L. R. 8 Mad. 192; and *Nagamma* v. *Subba* I. L. R. 11 Mad. 197, distinguished. HUSSAIN *v.* MADAN KHAN.

[17 Mad. 265

——, s. 545.

See SURETY—ENFORCEMENT OF SECURITY.

[22 Calc. 25
[17 All. 99

——, s. 546.

See SURETY—ENFORCEMENT OF SECURITY.

[23 Calc. 212

——, s. 549.

See APPEAL—DECREES.

[18 All. 101

See CASES UNDER SECURITY FOR COSTS—APPEALS.

——, s. 551.

See APPEAL—DISMISSAL OF APPEAL.

[21 Bom. 548
[24 Calc. 759

——, s. 556.

See APPEAL—DECREES.

[23 Calc. 115, 827

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[18 All. 119

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 558.

See LIMITATION ACT, ART. 168.

[23 Calc. 339

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.

[18 All. 119

——s. 559.

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

[16 All. 5

[19 Mad. 151

——, s. 561.

See APPEAL—OBJECTIONS BY RESPONDENT.

[17 All. 518

See PRIVY COUNCIL, PRACTICE OF—OBJECTIONS BY RESPONDENT.

[23 Calc. 922

——s. 562.

See APPEAL—ORDERS.

[16 All. 375

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—FINALITY OF DECREE OR ORDER.

[17 All. 112

[L. R. 22 I. A. 1

See CASES UNDER REMAND.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 774

——, s. 564.

See REMAND—POWER OF REMAND.

[17 All. 29

——, s. 565.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—FINALITY OF DECREE OR ORDER.

[17 All. 112

[L. R. 22 I. A. 1

——, s. 566.

See JUDGMENT—CIVIL CASES.

[19 Bom. 551

See CASES UNDER REMAND.

——, s. 568.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

[21 Calc. 484

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

[21 Calc. 484

[18 Mad. 94

[24 Calc. 98

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See REMAND—PROCEDURE ON REMAND.

[19 Mad. 127

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTION OF FACT.

[24 Calc. 98

——, s. 574.

See JUDGMENT—CIVIL CASES.

[19 Bom. 551

——, s. 577.

See APPEAL—DISMISSAL OF APPEAL.

[21 Bom. 548

——, s. 578.

See CASES UNDER APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

See MULTIFARIOUSNESS.

[16 All. 279

See PLAINT—VERIFICATION AND SIGNATURE.

[18 All. 396

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[24 Calc. 418

See VALUATION OF SUIT—SUITS.

[24 Calc. 661

——, s. 582.

See APPELLATE COURT—EXCERCISE OF POWERS IN VARIOUS CASES—PLAINT, AMENDMENT OF.

[19 Bom. 303

See PARTIES—SUBSTITUTION OF PARTIES —APPELLANTS.

[21 Bom. 102

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.

[18 All. 285

See PLAINT—AMENDMENT OF PLAINT.

[19 Bom. 303

See REMAND—POWER OF REMAND.

[17 Mad. 187

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 102

See SURETY—ENFORCEMENT OF SECURITY.

[17 All. 99

——, s. 583.

See S. 244—QUESTIONS IN EXECUTION OF DECREE.

[22 Calc. 501

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[18 Bom. 224

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.
[21 Calc. 989

See MONEY PAID UNDER DECREE.
[17 Mad. 82

See PRE-EMPTION—PURCHASE-MONEY.
[18 All. 262

See RESTITUTION OF RIGHTS OF MOTION.
[21 Calc. 340
[19 All. 136

See SURETY—ENFORCEMENT OF SECURITY.
[17 All. 99

——, s. 584.

See LOCAL INVESTIGATION.
[16 All. 342

See REMAND—CASES OF APPEAL AFTER REMAND.
[19 Mad. 422

See CASES UNDER SPECIAL OR SECOND APPEAL.

——, s. 586.

See APPEAL—ORDERS.
[22 Calc. 734
[19 Mad. 391

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.

——s. 587.

See PARTIES — ADDING PARTIES TO SUITS—RESPONDENTS.
[19 Mad. 151

——, s. 588.

See s. 244—PARTIES TO SUITS.
[16 All. 483

See APPEAL—DECREES.
[17 All. 172

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.
[16 All. 483

See APPEAL—ORDERS.
[16 All. 234, 375
[19 Mad. 391

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.
[21 Bom. 273

See LETTERS PATENT, HIGH COURT, CL. 15.
[19 Mad. 422
[20 Mad. 152

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.
[16 All. 443

See REMAND—CASES OF APPEAL AFTER REMAND.
[19 Mad. 422
[18 All. 19

See CASES UNDER SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

——, s. 589.

See DISTRICT JUDGE, JURISDICTION OF.
[17 Mad. 377

——, s. 590.

See REMAND—CASES OF APPEAL AFTER REMAND.
[18 Mad. 421

——, s. 591.

See APPEAL—DECREES.
[23 Calc. 279, 406
[24 Calc. 725

See APPEAL—ORDERS.
[22 Calc. 734, 981

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.
[17 All. 475

See REMAND—CASES OF APPEAL AFTER REMAND.
[18 Mad. 421
[18 All. 19

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[24 Calc 319, 319 note

See SUPERINTENDENCE OF HIGH COURT, CIVIL PROCEDURE CODE, S. 622.
[18 Bom. 35

——, ss. 595–608.

See CASES UNDER APPEAL TO PRIVY COUNCIL.

——, s. 596.

See LIMITATION ACT, S. 7.
[18 Mad. 484

See LIMITATION ACT, ART. 177.
[18 Mad. 484

——, s. 598.

See LIMITATION ACT, S. 7.
[18 Mad. 484

See LIMITATION ACT, ART. 177.
[18 Mad. 484

——, s. 599.

See LIMITATION ACT, S. 7.
[18 Mad. 484

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See LIMITATION ACT, ART. 177.

[18 Mad. 484

——, s. 608.

See LETTERS PATENT, HIGH COURT, CL. 15.

[21 Calc. 473

See PRIVY COUNCIL, PRACTICE OF—STAY OF EXECUTION PENDING APPEAL.

[22 Calc. 1
[L. R. 21 I. A. 170

——, s. 610.

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

[22 Calc. 960
[23 Calc. 357

——, s. 614.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[24 Calc. 30

——, ss. 617, 618 and 619.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

[24 Calc. 129

——, s. 622.

See APPEAL—ACTS—ACT XX OF 1863.

[19 Mad. 285

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 273

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[22 Calc. 767

See GUARDIANS AND WARDS ACT, 1890, S. 1.

[18 Mad. 227

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 480

See LUNATIC.

[24 Calc. 133

See MUNSIF, JURISDICTION OF.

[20 Mad. 155

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT.

[21 Bom. 806

See REVIEW—POWER TO REVIEW.

[19 Bom. 116

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

See REVISION—CIVIL CASES—SMALL CAUSE COURT CASES.

[16 All. 476
[17 All. 422
[21 Bom. 250

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[18 Bom. 594

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—COMPENSATION FOR ACQUISITION OF LAND.

[20 Mad. 155

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776
[22 Calc. 802

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

——, ss. 623–627.

See CASES UNDER REVIEW.

——, s. 623.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[16 All. 390

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 319, 319 note

——, s. 626.

See APPEAL—ORDERS.

[22 Calc. 734
[18 All. 44

——, s. 629.

See APPEAL—ORDERS.

[22 Calc. 3, 734, 984
[18 All. 44
[24 Calc. 878

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 319, 319 note

——, s. 642.

See ATTACHMENT — ATTACHMENT OF PERSON.

[23 Calc. 128

——, s. 643.

See DIVISION BENCH OF HIGH COURT, JURISDICTION OF.

[23 Calc. 532

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[23 Calc. 532

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concluded.*

——, s. 644.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED. [24 Calc. 766

——, s. 646A.

See MUNSIF, JURISDICTION OF. [23 Calc. 425

——, s. 646B.

See MUNSIF, JURISDICTION OF. [23 Calc. 425

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS. [21 Calc. 249

——, s. 647.

See s. 100. [18 Bom. 59

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT. [17 Mad. 67 [18 Bom. 429 [17 All. 106 [20 Bom. 541

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &C. [18 Bom. 61

See PRACTICE—CIVIL CASES—SALE BY RECEIVER. [21 Calc. 479

See PROBATE—TO WHOM GRANTED. [18 Bom. 237

——, s. 649.

See MUNSIF, JURISDICTION OF. [19 Mad. 445

——, s. 652.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—LEAVE TO SUE. [18 Mad. 236

——, Sch. IV, Nos. 109 and 128.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED. [24 Calc. 766

——, Sch. IV, No. 156.

See PRACTICE—CIVIL CASES—COMMISSION. [23 Calc. 404

CIVIL PROCEDURE CODE AMENDMENT ACT (VII OF 1888).

——, s. 27.

See CIVIL PROCEDURE CODE, s. 258. [19 Bom. 204 [21 Bom. 122

CIVIL PROCEDURE CODE AMENDMENT ACT (VII OF 1888)—*concluded.*

——, s. 30.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS. [18 All. 437

——, s. 55.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS. [18 All. 437

——, s. 56.

See DISTRICT JUDGE, JURISDICTION OF. [17 Mad. 377

——, s. 60.

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—GENERAL CASES. [21 Calc. 249

CIVIL PROCEDURE CODE AMENDMENT ACT (X OF 1888).

——, s. 3.

See DISTRICT JUDGE, JURISDICTION OF. [17 Mad. 377

CIVIL PROCEDURE CODE AMENDMENT ACT (VI OF 1892).

——, s. 4.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT. [18 Bom. 429 [18 Mad. 131 [17 All. 106 [20 Bom. 198

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &C. [18 Bom. 61

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION. [16 All. 75

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS. [18 Mad. 131

——, s. 5.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT. [17 All. 106

CIVIL PROCEDURE CODE AMENDMENT ACT (V OF 1894).

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION. [21 Calc. 940 [22 Calc. 767 [18 Mad. 477

CIVIL PROCEDURE CODE AMENDMENT ACT (V OF 1894)—*concluded.*

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.

[23 Calc. 393, 396 note

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[23 Calc. 682, 953

CLAIM, ABANDONMENT OF PART OF.

See DEBTOR AND CREDITOR.

[22 Calc. 434
[L. R. 22 I. A. 68

See PRIVY COUNCIL, PRACTICE OF—VALUATION OF APPEAL.

[22 Calc. 434
[L. R. 22 I. A. 68

See CASES UNDER RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

CLAIM TO ATTACHED PROPERTY.

See ABSCONDING OFFENDER.

[20 Mad. 88

See ATTACHMENT—PRIORITY OF ATTACHMENT.

[19 Bom. 710

See CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUITS.

[18 All. 52

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[19 Bom. 328

See CRIMINAL PROCEEDINGS.

[18 Bom. 581

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[17 Mad. 17

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[21 Bom. 205

See LIMITATION ACT, ART. 11.

[18 Mad. 265
[24 Calc. 563

See LIMITATION ACT, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.

[23 Calc. 437

See ONUS OF PROOF—CLAIMS TO ATTACHED PROPERTY.

[18 All. 369

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[16 All. 165

CLAIM TO ATTACHED PROPERTY—*continued.*

See RIGHT OF SUIT—CLAIM TO ATTACHED PROPERTY.

[21 Bom. 53

See VALUATION OF SUIT—SUITS.

[16 All. 308
[17 All. 69

1.—*Claim on property ordered to be sold under a mortgage-decree—Civil Procedure Code* (1882), *ss.* 278 *and* 287—*Stay of sale in execution of decree.*] *H* obtained a decree upon a mortgage against *D* in 1891, and applied in execution for the sale of the mortgaged property. On the proclamation of the sale being issued, *K* intervened, alleging that the property had been sold to him by *D* in 1883 at a private sale. The Subordinate Judge allowed his claim, and stopped the sale, being of opinion that he had power, under s. 287 of the Civil Procedure Code, to make this order:—*Held*, that the order was made without jurisdiction, and must be discharged. Proceedings by way of claim as provided by s. 278 of the Civil Procedure Code (Act XIV of 1882) are not applicable where the property is directed to be sold under a mortgage-decree, and s. 287 had no application. *Deefholts* v. *Peters*, I. L. R. 14 Calc. 631, followed. HIMATRAM *v.* KHUSHAL JETHIRAM GUJAR.

[18 Bom. 98

2.—*Application by third party for removal of attachment—Order refusing to remove attachment—Omission by third party to bring subsequent suit to establish right to attached property—Subsequent withdrawal of attachment by attaching party, Effect of—Subsequent claim to property by the party who had failed to remove attachment—Civil Procedure Code* (1882), *ss.* 278 *and* 283—*Title.*] The plaintiff was the assignee of a mortgage-decree, dated the 2nd May, 1885. In 1888, he attached the mortgaged property in execution of the decree, whereupon the defendant intervened and applied to have the attachment removed, on the ground that prior to the attachment she had purchased the land under a registered deed of sale, dated the 23rd June, 1888. Her application was rejected on the 27th September, 1888. Subsequently the judgment-debtors applied and obtained the Court's permission to sell the land by private contract, and, on the 1st November, 1888, the plaintiff purchased it and withdrew his application for execution on the 20th November, 1888. In 1889, the plaintiff brought this suit against the defendant to obtain the removal of certain portions of a culvert erected by her on the land. The defendant pleaded that she was the owner of the property, having purchased it on the 23rd June, 1888. The Subordinate Judge passed a decree for the plaintiff, on the ground that though the plaintiff's sale-deed was not entitled to preference over the defendant's, still as she had taken no steps to establish her right to the property in a regular suit after application for the removal of the plaintiff's attachment had been rejected, effect could not be given to her purchase. On appeal by the defendant, the decree was reversed, and the

CLAIM TO ATTACHED PROPERTY—*continued.*

plaintiff preferred a second appeal:—*Held*, confirming the appellate decree, that when the plaintiff withdrew his attachment on the 20th November, 1888, the parties were restored to the *status quo ante*. The object of the claim which was preferred by the defendant was, as contemplated by s. 278 of the Civil Procedure Code (Act XIV of 1882), to obtain the removal of the attachment, and when that attachment was removed by the judgment-creditor's own act, there was no longer an attachment or any proceeding in execution of which the order could operate to the prejudice of the claimant, and, therefore, there was no necessity for her to bring a suit to set aside the order. The defendant's title to the property, having been acquired on the 23rd June, 1888, was superior to the plaintiff's, which was not acquired before November, 1888. GOPAL PURSHOTAM *v.* BAI DIVALI.

[18 Bom. 241

3.—*Suit to set aside order removing attachment—Suit for declaration of title—Adverse possession—Civil Procedure Code* (1882), *s.* 283.] The plaintiff obtained a decree against *I*, and in execution attached the property in dispute. The defendants intervened, and obtained an order for the removal of the attachment on the 11th August, 1888. On the 13th August, 1889, the plaintiff instituted this suit for a declaration that the property belonged to his judgment-debtor (*I*), and as such was liable to attachment and sale. The defendants pleaded that they had been in possession of the property for more than twelve years prior to the institution of the suit, and that the suit was therefore barred. The Judge rejected the plaintiff's claim:—*Held*, reversing the decree, that the suit being brought under s. 283 of the Civil Procedure Code (Act XIV of 1882), it was a suit to set aside the order of 11th August, 1888, directing the removal of the attachment, and should be determined by ascertaining the rights of the parties at the date of that order. As the defendants had not at that date acquired a title to the property by adverse possession for twelve years, the plaintiff was entitled to a decree. HARISHANKAR JEBHAI *v.* NARAN KARSAN.

[18 Bom. 260

4.—*Goods consigned to agent for sale on commission—Equitable assignment of goods by consignor—Goods attached by judgment-creditor of consignor—Claim by agent—Civil Procedure Code* (1882), *s.* 280.] One *P* at Viramgam consigned certain bags of seed to *V H & Co.* at Bombay for sale on commission, and drew *hundis* against the goods for Rs. 3,200 which, at his request, *V H & Co.* accepted and paid on receiving the railway receipts by post. The goods were to be sold on arrival on *P's* account and the proceeds credited to him as against the advances made by the payment of the *hundis*. On the arrival of the goods at Bombay, they were attached by *B S & Co.*, who had obtained decrees against *P*:—*Held*, that *V H & Co.* were entitled to the goods. They had made specific advances against the goods. *B S & Co.* as attaching creditors occupied the same position as *P* himself and had no better claim to the goods than he had; and if he had attempted to prevent the goods reaching the hands of *V H & Co.*, who at his request had made specific advances against them, he would have been restrained by injunction:—*Held*, also that at the date of attachment the goods were in possession of *P* by the Railway Company "on account of or in trust for" *V H & Co.*, in the sense in which that expression is used in s. 280 of the Civil Procedure Code. VELJI HIRJI *v.* BHARMAL SHRIPAL.

CLAIM TO ATTACHED PROPERTY—*concluded.*

[21 Bom. 287

5.—*Civil Procedure Code* (1882), *ss.* 278 *and* 283—*Suit to have attached property declared not liable to attachment and sale—Suit, without bringing claim under s.* 278—*Right of suit.*] The provisions of s. 278 of the Code of Civil Procedure and the sections immediately succeeding are not exclusive of the remedy provided by s. 283 of the Code. *Man Kuar* v. *Tara Singh*, I. L. R. 7 All. 583, considered. SUNDAR SINGH *v.* GHASI.

[18 All. 410

6.—*Civil Procedure Code* (1882), *s.* 278, *et seq.*—*Effect of order under s.* 278.] An order in favour of one of several decree-holders on an objection under s. 278 of the Code of Civil Procedure does not enure for the benefit of other decree-holders who are not parties to the proceedings under s. 278. *Badri Prasad* v. *Muhammad Yusuf*, I. L. R. 1 All. 382, referred to. JAGANNATH *v.* GANESH.

[18 All. 413

CLAIM TO DISTRAINED PROPERTY.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[22 Calc. 935

CO-DEFENDANT.

See CASES UNDER RES JUDICATA—PARTIES—CO-DEFENDANTS.

CODIFYING THE LAW, OBJECT OF.

See STATUTES, CONSTRUCTION OF.

[23 Calc. 563

CO-HEIRESSES.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—DAUGHTERS.

[24 Calc. 339

COLLECTOR.

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR.

[18 All. 312

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 316

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[23 Calc. 679
[19 Mad. 435

COLLECTOR—*continued.*

——, Attachment by.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[21 Calc. 70
[L. R. 20 I. A. 165

——, Certificate of.

See HEREDITARY OFFICES ACT, s. 10.

[21 Bom. 55

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[18 Bom. 525

See PENSIONS ACT, s. 4.

[17 All. 1
[L. R. 21 I. A. 148
[18 Mad. 187

See PUBLIC DEMANDS RECOVERY ACT, s. 7.

[23 Calc. 775

——, Duty of.

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[24 Calc. 418

——, Duty and functions of.

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

[18 Bom. 516

——, Notice by.

See LIMITATION ACT, s. 19.

[17 All. 198

——, Order of.

See APPEAL—ORDERS.

[22 Calc. 419

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

[18 All. 437

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[20 Bom. 747

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[17 Mad. 298

——, Power of.

See HEREDITARY OFFICES ACT, s. 17.

[19 Bom 581

See KHOTI SETTLEMENT ACT, ss. 20 AND 21.

[18 Bom. 244

See LAND ACQUISITION ACT, 1870, s. 15.

[19 All. 339

See LIMITATION ACT, ART. 14.

[18 Bom. 244

COLLECTOR—*continued.*

See MAMLATDARS COURTS ACT, s. 17.

[19 Bom. 675

See PAUPER SUIT—APPEALS.

[18 Bom 454

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[19 Bom. 216

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[19 All. 121

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[18 Bom. 454

See VILLAGE CHOWKIDARS ACT, ss. 48 AND 64.

[21 Calc. 626

——, Reference by.

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT.

[21 Bom. 806

——, Revision by.

See KHOTI SETTLEMENT ACT, s. 17.

[21 Bom. 244

——, Sanction of, to enhanced rent.

See MADRAS RENT RECOVERY ACT, s. 11.

[17 Mad. 43, 50, 54

1.—*Power of Collector as agent to Court of Wards—Contract Act, s. 25, cl. 3—Promise to pay a time-barred debt—Madras Regulation (V of 1804), s. 17.*] A Collector as agent to the Court of Wards has no authority to bind a ward of the Court of Wards by a promise under the Contract Act, s. 25, cl. 3, to pay a debt which is barred by limitation. SURYANARAYANA *v.* NARENDRA THATRAZ.

[19 Mad. 255

2.—*Power of Collector—Civil Procedure Code (1882), ss. 295 and 320—Execution of decree—Power of Collector to deal with money realised through his Court in execution of a Civil Court's decree—Sale-proceeds, Distribution of.*] Where a decree has been sent to the Collector for execution under s. 320 of the Code of Civil Procedure, he holds any money which may be realised in execution of such decree at the disposal of the Civil Court by which the decree has been sent to him for execution, and he is not competent to distribute such money in contravention of an order from the Civil Court. TAPESRI LAL *v* DEOKINANDAN LAL.

[16 All. 1

3.—*Power of Collector—Office of kazi—Hereditary office—Watan—Hereditary Offices Act (Bombay Act III of 1874), s. 9—Grant for public purposes—Resolution of Government—Possession, Delivery of.*] The office of *kazi* is not an hereditary office, unless perhaps by special custom of the locality. Where such a custom is not established property attached to the office is not *watan* pro-

COLLECTOR—*concluded.*

perty, and the Collector has no power to make an order with respect to it under s. 9 of the Hereditary Offices Act (Bombay Act III of 1874). *Jamal valad Ahmed* v. *Jamal valad Jallal*, I. L. R. 1 Bom. 633; and *Daudsha* v. *Ismalsha*, I. L. R. 3 Bom. 72, followed. A Resolution of Government empowering a Collector to levy full assessment from the person other than the grantee in possession of land granted for public service does not authorise him to order the delivery of possession of the land to the grantee. BABA KAKAJI SHET SHIMPI *v.* NASSARUDDIN.

[18 Bom. 103

COLLISION.

See SHIPPING LAW—COLLISION.

[24 Calc. 627

COLLUSION.

See INSOLVENT ACT, S. 9.

[21 Bom. 205

COMMISSION.

——, Right to.

See BROKER

[20 Bom. 124

—— to examine witnesses.

See PRACTICE — CIVIL CASES—COMMISSION.

[23 Calc. 404

—— to executor.

See MAHOMEDAN LAW—WILL.

[25 Calc. 9

—— to trustees.

See WILL—CONSTRUCTION.

[24 Calc. 44

COMMISSION—CRIMINAL CASES.

1.—*Examination of purdanashin lady — Code of Criminal Procedure* (1882), *ss.* 6, 7, 503, 504, 505, 506 *and* 507—*Presidency Magistrate, Power of.*] It is doubtful if a Presidency Magistrate in the Town of Calcutta has power to issue a commission under ss. 503 to 507 of the Code of Criminal Procedure to examine a witness residing within his own jurisdiction; but there is nothing in the Code to prevent a Presidency Magistrate examining a witness within his jurisdiction at some place other than the Court-house. Where a Presidency Magistrate refused, on the ground of want of jurisdiction, to grant a commission for the examination of a *purdanashin* lady, but offered to take her evidence in his Court when cleared for the purpose, or in his private room, and she applied to the High Court for a commission being granted, or for such other order as they might deem proper, the High Court on revision directed that if the lady would take a house or suite of rooms not far from the Magistrate's Court, and pay all the costs which the Magistrate deemed reasonable and proper, he should not enforce her attendance in Court, but

COMMISSION – CRIMINAL CASES –

concluded.

examine her in the place so appointed, in the presence of the parties concerned, and in the manner in which *purdanashin* ladies are ordinarily examined. HEM COOMAREE DASSEE *v.* QUEEN-EMPRESS.

[24 Calc. 551

2.—*Evidence Act* (*I of* 1872), *s.* 33—*Evidence taken on commission, Admissibility of, in evidence—Right and opportunity to cross-examine—Criminal Procedure Code* (1882), *Chap. XL. ss.* 503 *and* 507—*Interrogatories, Evidence taken by.*] Depositions taken on commission in criminal cases, although inadmissible under Chap. XL of the Criminal Procedure Code (Act X of 1882), may be admitted under s. 33 of the Evidence Act (I of 1872) if the requirements of the proviso to that section have been complied with. The words "opportunity to cross-examine" in the proviso to s. 33 do not imply that the actual presence of the cross-examining party or his agent before the tribunal taking the evidence is necessary. To make evidence admissible against an accused person under s. 33 of the Evidence Act, the fact that he had full opportunity of cross-examination, if not admitted, must be proved. *Quære*—Whether the opportunity to administer cross-interrogatories under a commission is an "opportunity to cross-examine" within the meaning of the proviso to s. 33 of the Evidence Act so as to render the evidence taken on interrogatories admissible. QUEEN-EMPRESS *v.* RAMCHANDRA GOVIND HARSHE.

[19 Bom. 749

COMMISSIONER.

——, Power of.

See VILLAGE CHOWKIDARS ACT, SS. 48 AND 64.

[21 Calc. 626

—— for partition, Appointment of.

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[23 Calc. 679

COMMITMENT.

See CRIMINAL PROCEEDINGS.

[17 Mad. 402

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[24 Calc. 429

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—OPIUM ACT.

[19 All. 465

——, Trial without.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

See SESSIONS JUDGE, JURISDICTION OF.

[22 Calc. 50

COMMITMENT—*concluded.*

—*Criminal Procedure Code* (1882), *s.* 423—*Power of Appellate Court—Commitment to the Court of Sessions—Offences triable exclusively by the Court of Sessions.*] Section 423 of the Criminal Procedure Code is not limited to cases triable exclusively by the Court of Sessions. An Appellate Court has under that section the power to order an accused person to be committed for trial by the Court of Sessions in cases which are not exclusively triable by the Court of Sessions. *Queen-Empress* v. *Sukha*, I. L. R. 8 All. 14, dissented from; *Queen-Empress* v. *Abdul Rahiman*, I. L. R. 16 Bom. 580, followed. MISRI LAL *v.* LACHMI NARAIN BAJPIE.

[23 Calc. 350

COMMITTEE.

—— of lunatic, Mortgage by.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

[22 Calc. 864

COMMON OBJECT.

See CHARGE—FORM OF CHARGE.

[21 Calc. 827, 955

See CHARGE TO JURY—MISDIRECTION.

[21 Calc. 955

See UNLAWFUL ASSEMBLY.

[22 Calc. 276, 306

COMPANIES ACT (VI OF 1882).

See CASES UNDER COMPANY.

——, s. 130.—*Meaning of "Court"—Jurisdiction of District Judge and Subordinate Judge.*] *Held* that with regard to a Company the registered office of which was at Mussooree, "the Court," as that term is used in Part IV of the Indian Companies Act (VI of 1882), means the Court of the District Judge of Saharanpur, and not that of the Subordinate and Small Cause Court Judge sitting at Mussooree or Dehra. HIMALAYA BANK *v.* QUARRY.

[17 All. 252

——, s. 134.

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.

[18 Bom. 65

——, s. 144.

See PLAINT—AMENDMENT OF PLAINT.

[17 All. 292

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.

[17 All. 292
[18 All. 198

——, s. 162.

See APPEAL—ACTS—COMPANIES ACT.

[18 All. 215

——, ss. 162 and 163.

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

[16 All. 88

COMPANIES ACT (VI OF 1882)—*concld.*

——, s. 169.

See REVIEW—POWER TO REVIEW.

[16 All. 53

————, Application under.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 438

——, s. 169.—"*Rehearing*," *Meaning of—Application to set aside an ex-parte order.*] Section 169 of the Indian Companies Act (VI of 1882) does not apply to an application to set aside an *ex-parte* order. The term "rehearing" in s. 169 of the Act means a rehearing in the nature of an appeal. PARVATISHANKAR *v.* ISHVARDAS JAGJIVANDAS.

[19 Bom. 208

——, s. 214.

See APPEAL—ACTS—COMPANIES ACT.

[18 All. 215

See LIMITATION ACT, S. 12.

[18 All. 215

————, Order under.

See COURT-FEES ACT, SCH. II, ART. 11.

[17 All. 238

————, Proceeding under.

See LIMITATION ACT, ART. 36.

[18 All. 12
[19 Mad. 149

——, s. 215.

See BANKERS.

[16 All. 88

COMPANY.

		Col.
1.	Formation and Registration	... 213
2.	Articles of Association and Liability of Shareholders	... 214
3.	Rights of Shareholders	... 216
4.	Powers, Duties and Liabilities of Directors	... 217
5.	Winding up	... 218
	(*a*) Duties and Powers of Liquidators	... 218
	(*b*) Claims on Assets	... 218
	(*c*) Liability of Officers	... 219

See BANKERS.

[16 All. 88

——, Manager of.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS.

[21 Calc. 915

——, Order made in course of winding up.

See REVIEW—POWER TO REVIEW.

[16 All. 53

COMPANY—*continued.*

——, Principal Officer of.

See PLAINT—VERIFICATION AND SIGNATURE.

[21 Calc. 60

See WRITTEN STATEMENT.

[22 Calc. 268

——, Suit by, in liquidation.

See PLAINT—AMENDMENT OF PLAINT.

[17 All. 292

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.

[17 All. 292

——, Transfer by old, to new.

See STAMP ACT, SCH. I, ART. 21.

[20 Bom. 432

——, Winding up.

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 273

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.

[18 Bom. 65

(1) FORMATION AND REGISTRATION.

1.—*Companies Act* (*VI of* 1882), *s.* 4—*Illegal association—Business carried on by unregistered association for the purpose of gain—Right of suit.*] Persons more than twenty in number paid each a certain sum monthly to a stakeholder. The sum total of the subscriptions was then paid over as a loan free of interest to one of the subscribers chosen by casting lots, and he was thereupon required to execute a bond with a surety obliging him to continue his monthly subscriptions to the end of the period for which the arrangement was agreed to hold good—that period being as many months as there were subscribers. The bonds in question were executed in favour of the stakeholder and the subscribers. The business was not registered. A suit was brought on one of such bonds to recover the amount payable for subscription on account of the period subsequent to its execution:—*Held*, that the obligees carried on business which had for its object the acquisition of gain within the meaning of Companies Act, 1882, s. 4, and accordingly constituted an illegal association, and that the suit was not maintainable RAMASAMI BHAGAVATHAR *v.* NAGENDRAYYAN.

[19 Mad. 31

2.—*Companies Act* (*VI of* 1882), *s.* 4—*Unregistered association—Mortgage, Illegality of—Right of suit—Estoppel.*] In 1868, the Madras Hindu Mutual Benefit Permanent Fund was created for the purpose of enabling Hindus to assist one another and invest their savings chiefly in landed property, and the doing all such other things as are incidental or conducive to the attainment of the above objects. By the rules of the said fund, which was not registered under the Indian Companies Act (X of 1866), it was provided that the members should pay subscriptions at the rate of Rs. 2-8-0 per share per mensem for seven years from the date of admission, and that, at the end of the seven years, Rs. 250 should be paid in full discharge of each share. It was further provided that subscribers should be entitled to borrow money from the said fund at interest, that a reserve fund be formed and distributed once every five years to the subscribers, and that surplus collections be distributed among the subscribers annually. In 1868, defendants' father borrowed money on mortgage from the fund in accordance with the rules, and the amount was admittedly due at the time of suit. The fund was wound up under an order of the High Court, dated 15th September, 1877, during the lifetime of defendants' father, who, however, took no active part in those proceedings. It further appeared that, on the execution of the mortgage, the defendants' father (the mortgagor) took a lease from the mortgagees of the houses mortgaged, and retained possession of them as tenant:—*Held*, that the association had for its object the acquisition of gain, and that, as the association consisted of more than twenty members and was not registered, its formation was forbidden by the Indian Companies Act (X of 1866), s. 4, that the mortgage suit having for its object the carrying out of the illegal purpose of the association was an illegal transaction, and that the suit must fail:—*Held*, further, that the defendants were not estopped from setting up the plea of illegality either by the order of 1877 or by reason of their predecessor in title having attorned to the fund. MADRAS HINDU MUTUAL BENEFIT PERMANENT FUND *v.* RAGAVA CHETTI.

[19 Mad. 200

3.—*Companies Act* (*VI of* 1882), *s.* 4—*Unregistered association for gain—Illegal contract—Lottery company.*] The prize winners in a lottery in which more than twenty persons took tickets covenanted with the promoters of the lottery to continue their subscriptions in respect of the successful ticket for two more years in accordance with the arrangement under which the lottery was established. The money not having been paid, the promoters brought a suit on the covenant:—*Held*, that there was no association of twenty persons for the purpose of gain or at all, and consequently, that the plaintiffs were not precluded from suing for want of registration under the Companies Act, s. 4. PANCHENA MANCHU NAYAR *v.* GADINHARE KUMARANCHATH PADMANABHAN NAYAR.

[20 Mad. 68

(2) ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

4.—*Contributory—Increase of capital—Illegal issue of shares—Reduction of capital—Companies Act* (*VI of* 1882), *s.* 13.] The Nawab of the Beyla Spinning, Weaving and Manufacturing Company, Limited, was registered under the Indian Companies Act (X of 1866). The original capital of the company consisted of Rs. 4,00,000, divided into 1,600

COMPANY—*continued.*

(2) ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*continued.*

shares of Rs. 250 each. In 1882 the capital of the company was increased by Rs. 1,00,000, divided into 1,600 shares of Rs. 62-8. The resolution to increase the capital was not passed in accordance with the articles of association, *i.e*, "with the sanction of a special resolution of the company passed at a general meeting." On the 5th November, 1884, a resolution was passed at a general meeting of the company that the shareholders should take up 459 shares of the original capital and 1,027 shares of the increased capital, which were then in the hands of the company, in the proportion of one share to every two shares already held by them. In pursuance of this resolution the appellants took up several shares of the original capital as well as of the new capital. On 19th October, 1885, a general meeting of the company was held, at which it was resolved that the resolution of the 5th November, 1884, and all acts done in connection with it, should be set aside, that the shares taken by the shareholders in pursuance of that resolution should be taken back by the company, and such amounts as had been paid by them on those shares should be credited to their names in the company's books. This was accordingly done, and the shares were transferred to the name of the company. In October, 1886, the company was wound up by order of the Court. In settling the list of contributories, the District Judge of Surat held that the appellants were liable, as contributories, in respect of all the shares which they had taken up in pursuance of the resolution of 5th November, 1884. On appeal from this decision:—*Held*, that with respect to the shares of the original capital, the resolution of the 19th October, 1885, was illegal and invalid. It operated, not as an investment by the company of its funds in its own shares, but as an extinguishment of the shares, and such extinguishment was virtually a reduction of the capital, which could not be done without complying with the provisions of s. 13 of the Indian Companies Act (VI of 1882). The holders of such shares were therefore properly placed on the list of contributories:—*Held*, also, that the issue of the shares of the new capital was illegal, as the resolution to increase the capital had not been come to in accordance with the articles of association. It was therefore open to the company to set aside the resolution of 5th November, 1884. When it was set aside, the persons who held the new shares ceased to be shareholders, and could not, therefore, be held liable as contributories. BHIMBHAI *v.* ISHWARDAS JUGJIWANDAS.

[18 Bom. 152

5.—*Companies Act* (*VI of* 1882), *ss.* 61, 126 *and* 144, *cl.* (*g*)—*Liability of the heirs of a deceased contributory—Calls made before the winding up—Limitation—Settlement by Official Liquidator of list of contributories—Shares duly issued, Cancellation of—Reduction of capital.*] Section 61, Indian Companies Act (VI of 1882), corresponding with s. 38 of the English Companies Act of 1862, creates a new liability in the shareholders, and that liability includes contribution, not only in respect of

COMPANY—*continued.*

(2) ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*concluded.*

calls made since the winding up, but also in respect of unpaid calls made before the date of the winding up, whether barred by limitation at that date or not. The Official Liquidator need not take out letters of administration to the estate of a deceased shareholder before settling the list of contributories. There is nothing in ss. 126 and 144 requiring the Official Liquidator to place on the list all the persons who may as representatives be liable to contribute in discharge of the liability of a deceased shareholder as contemplated by s. 126. Nor can the liability, under that section, of a person who has been placed on the list as his representative be affected by omission of the Official Liquidator to do so. Directors have no power to cancel shares duly issued to a shareholder at his request and so reduce the capital of the company. *Bhimbhai* v. *Ishwardas Jugjiwandas*, I. L. R. 18 Bom. 152, followed. SORABJI JAMSETJI *v.* ISHWARDAS, JUGJIWANDAS.

[20 Bom. 654

(3) RIGHTS OF SHAREHOLDERS.

6.—*Preferential dividend payable to holder of one set of shares—Construction of contract by the company to pay it to the shareholder and to his executor holding the same—Death of the shareholder—"Holder" of shares—Legal title to shares—Meaning of the word "hold"—Administration, Effect of.*] The goodwill of a business, which a merchant had carried on, and the capital, property and assets with it, were transferred by him in 1864 to a joint stock limited company, who agreed with him that, in consideration of the transfer by him of property, referred to in the contract as "the fixed assets," one hundred paid-up shares of Rs. 2,500 each, of which any assignment by him during the next five years from the registration of the company should not be recognized by them as valid, should be allotted to him. It was also agreed that, in consideration of the transfer, he and "his executors or administrators shall be entitled, so long as they hold the said hundred shares, to an extra or preferential dividend." On this agreement the parties acted, and the shareholder held the shares till he died in England in 1888, having by will directed that his executors or administrators should hold the hundred shares in trust for his surviving brothers, of whom the executor, who proved the will, was one. Administration with the will annexed was granted in India to the plaintiff in this suit as the attorney of the executor. A note of this was made in the register of the company, leaving the hundred shares still in the name of the testator. The company then discontinued to pay the preferential dividend, and contended that it was no longer payable, inasmuch as the testator's estate had been administered, and that the executor no longer held the shares as executor, but as trustee for the beneficiaries under the will:—*Held*, that the contract was still in operation, the executor still "holding" the shares within its meaning; and that the preferential dividend continued payable

COMPANY—*continued.*

(3) RIGHTS OF SHAREHOLDERS—*concluded.*

to the estate of the testator, the company being only concerned with the legal title to the shares, and not with any claims if there were any, that might be made by beneficiaries under the will against the executor as trustee. BOMBAY-BURMAH TRADING CORPORATION *v.* SMITH.

[19 Bom. 1

[L. R. 21 I. A. 139

Affirming decision of High Court in BOMBAY-BURMAH TRADING CORPORATION *v.* SMITH.

[17 Bom. 197

(4) POWERS, DUTIES AND LIABILITIES OF DIRECTORS.

7.—*Liability of directors for funds of company applied in transactions "ultra vires"—Dealing in shares of other companies.*] The plaintiff company was formed in 1864. By its memorandum of association its object was declared to be commission agency and general trading in cotton and also in goods and commodities suited for the market in the interior of India. The memorandum contained the following words:—"If found desirable, the company may effect purchases of cotton and produce in Bombay and ship to England and carry on such local trade as may seem profitable." The company went into liquidation in 1867. In April, 1890, the present suit was filed against the defendant, who had been one of the directors of the company, and it was alleged that after the formation of the company the defendant and his co-directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose, which was not warranted by the memorandum of association. The plaintiffs alleged that their dealings, which were duly set forth in their plaint, had resulted in a heavy loss to the company, and they now sought to recover from the defendant the sum of Rs. 3,37,700-13-5. There had been originally five directors of the company, but at the date of suit two of them were dead, and two had become insolvent. The plaint was filed in April, 1890:—*Held* (affirming the decision of PARSONS, J.), (1) that the memorandum of association did not justify the directors of the company in dealing in shares of other companies, and that the transactions complained of by the plaintiffs were *ultra vires;* (2) that the directors were liable to replace the moneys of the company which they had misapplied by applying them to a purpose which was *ultra vires.* KATHIAWAR TRADING CO. *v.* VIRCHAND DIPCHAND.

[18 Bom. 119

8.—*Cancellation of shares already issued — Reduction of capital.*] Directors have no power to cancel shares duly issued to a shareholder at his request and so reduce the capital of the company. *Bhimbhai* v. *Ishwardas Jugjiwandas*, I. L. R. 18 Bom. 152, followed. SORABJI JAMSETJI *v.* ISHWARDAS JUGJIWANDAS.

[20 Bom. 654

COMPANY—*continued.*

(4) POWERS, DUTIES AND LIABILITIES OF DIRECTORS—*concluded.*

9.—*Director selling his own shares to shareholder of company—Action for deceit—Position of director as regards individual shareholders.*] A director of a company, though he may occupy a fiduciary position with regard to the shareholders collectively, holds no such position with regard to individual shareholders. *Gilbert's case*, L. R. 5 Ch. D. 559; and *Gower's case*, L. R. 6 Eq. 77, referred to. WILSON *v.* MACAULIFFE.

[18 All. 56

(5) WINDING UP.

(*a*) DUTIES AND POWERS OF LIQUIDATORS.

10.—*Companies Act (VI of 1882), s. 187—Powers of liquidator after dissolution of company—Promissory note, Suit on.*] Suit on a promissory note of the defendant in favour of a company: the note was payable to the company or order. The company had gone into liquidation, and a liquidator had been duly appointed. The plaintiffs had purchased, together with certain other assets of the company, the note sued on, but did not obtain the liquidator's endorsement of the note until after the dissolution of the company was completed:—*Held*, that the liquidator had no power to endorse the note to the plaintiffs. RAMACHANDRA RAU *v.* KANDASAMI CHETTI.

[18 Mad. 498

11.—*Letters of administration to estate of deceased shareholder — Omission to put on list of contributories all persons liable as representatives of deceased shareholders.*] The Official Liquidator need not take out letters of administration to the estate of a deceased shareholder before settling the list of contributories. There is nothing in ss. 126 and 144 of the Companies Act (VI of 1882), requiring the Official Liquidator to place on the list all the persons who may, as representatives, be liable to contribute in discharge of the liabilty of a deceased shareholder as contemplated by s. 126. Nor can the liability, under that section, of a person who has been placed on the list as his representative be affected by omission of the Official Liquidator to do so. SORABJI JAMSETJI *v.* ISHWARDAS JUGJIWANDAS.

[20 Bom. 654

(*b*) CLAIMS ON ASSETS.

12.—*Secured and unsecured creditors—Application of English law where Indian Act is silent—Rule of justice, equity and good conscience.*] There being no provision in the Indian statute law by which, in the winding up of a company, secured creditors are entitled to any preference over unsecured creditors, in such proceedings the rule of English law—that secured creditors can only prove for the balance of their debts after deducting the value of their securities—should prevail as being consonant with justice, equity and good conscience. *Waghela Rajsanji* v. *Masludin*, I. L. R. 11 Bom. 551; L. R. 14 I. A. 89, referred to. MUSSOOREE BANK *v.* HIMALAYA BANK.

[16 All. 53

COMPANY—*continued.*

(5) WINDING UP——*continued.*

(*b*) CLAIMS ON ASSETS—*concluded.*

13.—*Distribution of assets — Loan society— Member withdrawing from association — Notice of withdrawal.*] One of the articles of association of a registered loan society provided that a member who has received no loan may withdraw from the association and receive the amount at his credit in calls *minus* the arrears, if any, and interest due thereon on giving one month's notice, such withdrawals to be paid from the first available funds. The society went into voluntary liquidation. By an extraordinary resolution it was resolved that the assets be rateably divided among the shareholders who had already withdrawn and those who were still in the fund. The liquidators applied to the Court under Companies Act, s. 182, to determine the question how the assets should be distributed with reference to the above article. SHEPHARD, J., ordered that notice of the application be given by advertisement on the notice-board of the Court and in newspapers, and that a copy be posted at the society's office:—*Held*, affirming the judgment of SHEPHARD, J., that those members who had given notice of withdrawal under the article quoted above were entitled to be paid out of the assets of the society in priority to the other members ADIPURNAM PILLAI *v.* D'SENA.

[19 Mad. 85

(*c*) LIABILITY OF OFFICERS.

14.—*Voluntary winding up—Inquiry into conduct of liquidators—Companies Act (VI of 1882), s. 214—Misfeasance or breach of trust—Practice—Procedure—Affidavit, Contents of—Summons, Contents of.*] Where contributories of a company in voluntary liquidation complain of the conduct of liquidators in the winding up, and desire an inquiry under s. 214 of the Indian Companies Act (VI of 1882), the proper procedure is by summons in chambers. Where it is sought to make an officer of a company liable for misapplication of the funds of a company or for misfeasance or breach of trust in relation to its affairs, the sum sought to be recovered should be definitely stated in the summons, and the grounds upon which the application is based should be fully and adequately set out in an affidavit or affidavits. IN RE JEHANGIR B. KARANI & Co.; HORMASJI RUSTOMJI DASAR *v.* PESTONJI EDALJI DHARWAR.

[19 Bom. 88

15.— *Auditor — Misfeasance — Damages — Remoteness of loss—Limitation Act (XV of 1877), Sched. II, Art. 36.*] An auditor of a company to which Act VI of 1882 applies, who is duly appointed by a general meeting of the company and not casually called in as occasion may require, is an officer of the company within the meaning of s. 214 of the abovementioned Act. *In re the London and General Bank*, L. R. (1895) 2 Ch. D. 673, referred to. The compensation, which, under s. 214 of the Indian Companies Act, 1882, may be assessed against a defaulting director or other officer

COMPANY—*concluded.*

(5) WINDING UP—*concluded.*

(*c*) LIABILITY OF OFFICERS—*concluded.*

of a Company, is of the nature of damages; it is, therefore necessary that the loss to the Company in respect of which compensation is asked for should be the direct, and not a remote and more or less speculative, consequence of the misfeasance or neglect of duty on the part of the director or other officer of the Company from whom compensation is sought. The special proceeding provided for by s. 214 of Act VI of 1882 is not subject to the limitation prescribed by Art. 36 of Sch. II of the Indian Limitation Act, 1877. CONNELL *v.* HIMALAYA BANK.

[18 All. 12

16.—*Companies Act (V of 1882), s. 214—Civil Procedure Code (1882), s. 368—Substitution of representatives of deceased respondent as parties.*] *R W* and others, contributories to a company which had gone into liquidation, filed an application under s. 214 of Act VI of 1882 directed against certain officers of the company. That application, after certain issues had been framed and partially tried, was dismissed, and an order was also made giving costs against the applicants. The applicants appealed to the High Court against the order of dismissal. Pending this appeal one of the opposite parties died, and it was sought to put his legal representatives upon the record of the appeal as a respondent:—*Held*, that in view of explanation II to s. 214 of the Indian Companies Act, 1882, the legal representatives of the said deceased respondent could not be brought upon the record, either in respect of the relief prayed for in the original application or in respect of the order making costs payable by the applicants, as that order could not be separated from the dismissal of the application. WALL *v.* HOWARD.

[18 All. 156

COMPENSATION.

Col.

1. Civil Cases ... 221
2. Criminal Cases ... 222
   (*a*) For Loss or Injury Caused by Offence ... 222
   (*b*) Compensation to Accused on Dismissal of Complaint ... 222

—— against officers of company.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[19 Bom. 88

[18 All. 12

See LIMITATION ACT, ART. 36.

[18 All. 12

[19 Mad. 149

—— for attachment.

See LIMITATION ACT, ART. 49.

[19 Mad. 80

—— for improvements.

See CASES UNDER LANDLORD AND TENANT — COMPENSATION FOR IMPROVEMENTS ON LAND.

COMPENSATION—*continued.*

—— for land.

See BOMBAY MUNICIPAL ACT, 1888, S. 298.

[18 Bom. 184

[19 Bom. 407

See LAND ACQUISITION ACT, 1870, S. 39.

[17 All. 573

—— for land, Apportionment of.

See LAND ACQUISITION ACT, 1894, S. 54.

[23 Calc. 526

—— for land, Decision granting.

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT, 1888.

[18 Bom. 184

—— for work done.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[21 Bom. 522

——, Notice to tenant to pay.

See BENGAL TENANCY ACT, S. 155.

[22 Calc. 77

——, Order for.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[22 Calc. 442

——, Recovery of, when paid.

See FINE.

[19 All. 112

——, Right to attach.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[16 All. 78

——, Suit for.

See LIMITATION ACT, ART. 120.

[23 Calc. 799

——, Time of awarding.

See LAND ACQUISITION ACT, 1870, SS. 13 AND 24.

[L. R. 24 I. A. 177

(1) CIVIL CASES.

1.—*Civil Procedure Code* (1882), *s.* 491—*Claim made by defendant for compensation for arrest—Leave to appear and defend—Cross claim in summary suit—Set-off—Practice.*] In a summary suit, if a defendant has been arrested before judgment and claims compensation for such arrest under s. 491, he is entitled on that ground to apply for leave to defend the suit, and, if a *primâ facie* case is made out, leave to defend should be given. (2). Under the Civil Procedure Code (Act XIV of 1882), a cross claim made by a defendant against a plaintiff cannot, in ordinary cases, be set up as a defence, except when it arises out of the very transaction sued upon and is in

COMPENSATION—*continued.*

(1) CIVIL CASES—*concluded.*

the nature of a set-off; but the special cross claim provided for by s. 491 of the Code, *viz.*, a claim for compensation for arrest on insufficient grounds, may under that section be taken into account in any suit, and the amount awarded as compensation be awarded in the decree, and thus *pro tanto* be a defence to the plaintiff's claim in the suit. ROULET *v.* FETTERLE.

[18 Bom. 717

(2) CRIMINAL CASES.

(*a*) FOR LOSS OR INJURY CAUSED BY OFFENCE.

2.—*Cattle Trespass Act* (*I of* 1871), *s.* 22—*Illegal seizure of cattle—Fine—Imprisonment in default of payment of compensation—Criminal Procedure Code* (1882), *s.* 386.] An accused was found to have loosed the complainant's cattle at night from a cattle pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release. He was proceeded against under Act I of 1871, and under the provisions of s. 22 ordered to pay compensation to the complainant, and in default to undergo one month's rigorous imprisonment:—*Held*, that s. 22 was inapplicable to the facts of the case, and that the order must be set aside. On the facts it was not a case of "illegal seizure and detention" of cattle, but rather one of theft, as all the elements of that offence were present, and the accused should have been charged with and tried for that offence:—*Held*, further, that the sentence of imprisonment in default of payment of the compensation was not warranted by law. Compensation may be levied as a fine, and the ordinary mode of levying fines is laid down in s. 386 of the Code of Criminal Procedure. The law nowhere provides that fines may be levied by means of imprisonment. PARYAG RAI *v.* ARJU MIAN.

[22 Calc. 139

QUEEN-EMPRESS *v.* LAKSHMI NAYAKAN.

[19 Mad. 238

(*b*) COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

3.—*Criminal Procedure Code* (1882), *ss.* 560 *and* 386—*Imprisonment in default of payment of compensation—Distress—Sentence, Legality of.*] The operation of s. 560 of the Code of Criminal Procedure is restricted to cases instituted by "complaint" as defined in the Code or upon information given *to* a Police-officer or a Magistrate, and consequently that section has no application to a case instituted on a Police report or on information given *by* a Police-officer. *Quære*—Whether under the section a Magistrate has power to make an order for imprisonment in default of payment of the compensation awarded? A Police constable arrested a carter and charged him before a Magistrate with an offence under s. 34 of Act V of 1861. The Magistrate acquitted the accused and directed, under s. 560 of the Code, that the Police constable should pay him Rs. 20 as compensation or undergo

COMPENSATION—*continued.*

(2) CRIMINAL CASES—*continued.*

(*b*) COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT—*continued.*

simple imprisonment for a fortnight:—*Held*, that as the section had no application to the case, the order was illegal, being made without jurisdiction:—*Held*, further, that even if the Magistrate had power under the Code to pass an order for imprisonment in default of payment of compensation awarded under s. 560, it was illegal to pass such an order until some attempt had been made to levy the amount in the manner provided by s. 386 for the levying of a fine. RAMJEEVAN KOORMI *v.* DURGACHARAN SADHU KHAN.

[21 Calc. 979

4.—*Criminal Procedure Code* (1882), *s.* 560—*Penal Code, ss.* 193 *and* 211—*Sanction to prosecute and award of compensation — Imprisonment in default of payment of compensation — Sentence, Legality of.*] The complainant was directed to pay Rs. 50 as compensation to the accused, or, in default, to suffer simple imprisonment for one month, under s. 560 of the Code of Criminal Procedure, and sanction was also granted to prosecute him for offences under ss. 211 and 193 of the Penal Code:—*Held*, that if the Magistrate thought that this was a case in which a prosecution under ss. 211 and 193 of the Penal Code should be sanctioned, he ought not to have taken action under the provisions of s. 560 of the Code of Criminal Procedure:—*Held*, also, that the order for imprisonment in default of payment of the compensation awarded was illegal. *Ramjeevan Koormi* v. *Durga Charan Sadhu Khan*, I. L. R. 21 Calc. 979, followed. SHIB NATH CHONG *v.* SARAT CHUNDER SARKAR.

[22 Calc. 586

5.—*Criminal Procedure Code* (1882), *s.* 560—*Order for imprisonment in default of payment of compensation.*] Although compensation awarded under s. 560 of the Code of Criminal Procedure is recoverable as if it were a fine, it is not competent to a Magistrate immediately upon ordering a complainant to pay compensation to direct that he should in default be sentenced to imprisonment. QUEEN-EMPRESS *v.* PUNNA.

[18 All. 96

6.—*Criminal Procedure Code* (1882), *s.* 560—*Frivolous and vexatious complaint—Cattle Trespass Act* (*IX of* 1871), *s.* 20—*Complaint of wrongful seizure of cattle—"Offence."*] A complaint of the wrongful seizure of catle is nott a complaint of an offence within the meaning of the Code of Criminal Procedure. Consequently, on the dismissal of such a complaint, it is not competent to a Court to act under s. 560 of the Code and award compensation to the persons against whom the complaint is made. *Pitchi* v. *Ankappa*, I. L. R. 9 Mad. 102; *Kottalanada* v. *Muthaya*, I. L. R. 9 Mad. 374; *Kalachand* v. *Gudadhur Biswas*, I. L. R. 13 Calc. 304; and *Nedaram Thakur* v. *Joonab*, I. L. R. 23 Calc. 248, referred to. MEGHAI *v.* SHEOBHIK.

[18 All. 353

COMPENSATION—*concluded.*

(2) CRIMINAL CASES—*concluded.*

(*b*) COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT—*concluded.*

7.—*Criminal Procedure Code* (1882), *s.* 560—*Separate charges and acquittal on one—Incomplete discharge or acquittal.*] The accused was charged under ss. 352 and 379 of the Penal Code, but convicted under s. 352, being discharged under s. 379. The Magistrate ordered the complainant to pay compensation for bringing a frivolous and vexatious charge under s. 560 of the Criminal Procedure Code. The order for paying compensation was set aside on the ground that s. 560 could only operate when there was a complete discharge or acquittal. MUKTI BEWA *v.* JHOTU SANTRA.

[24 Calc. 53

8.—*Criminal Procedure Code* (1882), *s.* 560—*Compensation for frivolous and vexatious complaint—Order in the alternative for imprisonment.*] It is not competent to a Court in awarding compensation under s. 560 of the Code of Civil Procedure against a complainant for making a frivolous and vexatious complaint to order at the same time that in default of payment of the compensation the person against whom the order is made suffer imprisonment. *Queen-Empress* v. *Punna*, I. L. R. 18 All. 96, approved. MANJHLI *v.* MANIK CHAND.

[19 All. 73

COMPETENT COURT.

See CASES UNDER RES JUDICATA—COMPETENT COURT.

COMPLAINT.

		Col.
1.	Institution of Complaint and necessary Preliminaries	... 224
2.	Dismissal of Complaint	... 225
	(*a*) Effect of Dismissal	... 225

(1) INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

1.—*Criminal Procedure Code* (1882), *s.* 191 (*c*)—*Criminal Procedure Code* (*Act X of* 1872), *s.* 140 (*c*)—*By whom a complaint of an offence may be made.*] The complaint upon which under s. 191 (*c*) of the Code of Criminal Procedure a Magistrate may take cognizance of an offence may be made by any member of the public acquainted with the facts of the case, not necessarily by the person aggrieved by the offence to which the complaint relates. *In re Ganesh Narayan Sathe*, I. L. R. 13 Bom. 600, followed. FARZAND ALI *v.* HANUMAN PRASAD.

[18 All. 465

2.—*Criminal trespass—Mischief—By whom complaint of offence may be made—Penal Code, ss.* 426 *and* 441.] The words "any person in possession" in s. 441 of the Penal Code do not mean only "a complainant in possession." Certain persons were prosecuted under ss. 426 and 447 of the Penal Code (Act XLV of 1860) for committing mischief and criminal trespass by entering upon

COMPLAINT—*continued.*

(1) INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*concluded.*

a certain field which was in the possession of the complainant's tenants and destroying the seed sown therein. The defence raised was an *alibi*; it was also contended on behalf of the accused that the field belonged to one of them, and that the complainant had no title whatever to it. The Magistrate, who tried the case, declined to go into the question of title; he found that the complainant's tenants were in possession of the field; and disbelieving the evidence of *alibi*, he convicted the accused and sentenced them to fine. On application in revision to the High Court, it was urged (*inter alia*) that the complainant, not being the person in possession, could not legally institute the criminal proceedings, and that, therefore, the conviction was bad:—*Held* that, looking to the nature of the false defence set up by the accused, this was not a case for interference in revision, as to do so would encourage perjury:—*Held*, also, that the words "any person in possession" in s. 441 of the Penal Code do not mean only "a complainant in possession," there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. *Queen* v. *Kalinath Nag Chowdhry*, 9 W. R. Cr. 1; *Chandi Pershad* v. *Evans*, I. L. R. 22 Cal. 123; *Iswar Chandra Karmakar* v. *Sital Das Mitter*, 8 B. L. R. Ap. 62; and *In re Ganesh Narayan Sathe*, I. L. R. 13 Bom. 590, referred to. QUEEN-EMPRESS *v.* KESHAVLAL JEYKRISHNA.

[21 Bom. 536

3.—*Omission to take sworn examination of the complainant — Complainant merely called upon to attest complaint in writing — Criminal Procedure Code* (1882), *s.* 200.] It is not a sufficient compliance with the provisions of s. 200 of the Code of Criminal Procedure where a complainant, who has presented a written complaint, is merely called upon to attest the complaint on oath, no separate sworn statement of the complainant being recorded by or under the orders of the Magistrate to whom the complaint is presented. *Queen-Empress* v. *Murphy*, I. L. R. 9 All. 666, distinguished. KESRI *v.* MUHAMMAD BAKHSH.

[18 All. 221

(2) DISMISSAL OF COMPLAINT.

(*a*) EFFECT OF DISMISSAL.

4.—*Fresh complaint after dismissal—Revival of proceedings—Criminal Procedure Code* (1882), *s.* 203—*Final disposal of case—Application of s.* 537 *of the Criminal Procedure Code.*] Where an original complaint is dismissed under s. 203 of the Criminal Procedure Code, a fresh complaint on the same facts cannot be entertained so long as the order of dismissal is not set aside by a competent authority. Section 537 of the Criminal Procedure Code is not intended to apply to a case which has not been finally disposed of. NILRATAN SEN *v.* JOGESH CHUNDRA BHUTTACHARJEE.

[23 Calc. 983

COMPLAINT—*concluded.*

(2) DISMISSAL OF COMPLAINT—*concluded.*

(*a*) EFFECT OF DISMISSAL—*concluded.*

5.—*Revival of proceedings—Criminal Procedure Code* (1882), *s.* 203—*Final disposal of case—Jurisdiction of Magistrate.*] Where an original complaint is dismissed under s. 203 of the Criminal Procedure Code, a fresh complaint on the same facts before the same Magistrate cannot be entertained, so long as the order of dismissal is not set aside by a competent authority. *Nilratan Sen* v. *Jogesh Chundra Bhuttacharjee*, I. L. R. 23 Calc. 98, followed. KOMAL CHANDRA PAL *v.* GOUR CHAND AUDHIKARI.

[24 Calc. 286

6.—*Revival of proceedings—Right of appeal—Criminal Procedure Code* (1882), *ss.* 423 *and* 439—*Presidency Magistrate, Jurisdiction of.*] Where a complaint was dismissed by an Honorary Magistrate, and an application was made to a Presidency Magistrate on the same facts and materials for a fresh summons:—*Held*, that as an Honorary Magistrate has co-ordinate jurisdiction with a Presidency Magistrate, there was no right of appeal to the Presidency Magistrate from the order of the Honorary Magistrate. The proper course would be to apply to the High Court under ss. 423 and 439 of the Criminal Procedure Code to set aside the order and direct a retrial. *Nilratan Sen* v. *Jogesh Chundra Bhuttacharjee*, I. L. R. 23 Calc. 983, approved; *Virankutti* v. *Chiyamu*, I. L. R. 7 Mad. 557; and *Opoorba Kumar Sett* v. *Probod Kumary Dassi*, 1 Calc. W. N. 49, discussed. GRISH CHUNDER ROY *v.* DWARKADASS AGARWALLAH.

[24 Calc. 528

COMPOUNDING OFFENCE.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—COMPOUNDING CRIMINAL OFFENCE.

[18 Mad. 189

—*Requisites for composition of offence valid in law—Criminal Procedure Code* (1882), *s.* 345—*Onus of proof—Wrongful restraint and confinement of coolies employed on tea gardens.*] Where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Criminal Courts to try it, the *onus* is on him to show that there was a composition valid in law. *M*, a European British subject, charged with the compoundable offences of wrongful restraint and wrongful confinement of coolies employed on a tea garden of which he was the manager, pleaded that the Magistrate had no jurisdiction to try the cases, as they had been compounded by the complainants. The alleged compromise consisted of a Bengali paper, signed by the coolies, stating that they "made *razinama*" (compromise) "of the case of their own accord," and a paper in English signed by *M*, these papers being given to the District Superintendent of Police, who had investigated the complaints, and who stated that he asked the coolies as to the contents of the Bengali paper, and they said that they had signed it voluntarily and stated its purport, and that

COMPOUNDING OFFENCE—*concluded.*

one of them said in the presence of the others that it was a *razinama*. *G*, one of the coolies, also wrote on the paper the words in Uriya, "I will not carry on the case." The Bengali paper was written by the *darogah* of the Police-station in presence of *M*. The paper signed by *M* was as follows:—"I hereby agree with these Ganjam people that there shall be no legal proceedings of any kind taken against them with the exception of those who have not completed their agreements. Those whose agreements have not been completed, proceedings will be taken against them on 22nd May, if they have not returned to the garden before then." Neither of the papers were explained to *G* so as to make them intelligible to him, for though the Bengali paper was read out, *G* did not understand that language. *G* was one of the coolies who had completed his agreement with *M*.:—*Held*, *per* PRINSEP, J.—The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification to act as an inducement for his desiring to abstain from a prosecution; here there was no forbearance on the part of *M* to proceed against *G*, who had served out the term of his engagement, and, therefore, there was no consideration for the agreement to compound. Having regard, moreover, to the ignorance and inferior intelligence of *G*, it was of vital importance for *M* to show what led to the alleged agreement, and how it was that the *darogah* was instrumental to it, which he had not done. *Per* TREVELYAN, J.:—Compounding an offence supposes an arrangement by which the parties have settled their differences and in the more usual acceptation of the term implies that the prosecutor has received some consideration or gratification for dropping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrangement must be similar to that which the Court requires for the proof of any agreement which is in issue; and unless it appears that the parties were free from influence of every kind and were fully aware of their respective rights, it would be impossible to give effect to a so-called arrangement or composition. Having regard to the fact that the writer of the Bengali agreement had not been called, and that the contracting parties were, on the one side, ignorant coolies, strangers to the land and to the language in which the document was written, and on the other, a European of some education, assisted by his Bengali clerk, and having also the assistance of the Police, it was not proved that *G* knew what he was about and was fairly contracting:—*Held*, therefore, by the Court that there was under the circumstances no compounding of the offences with which *M* was charged, valid in law such as to deprive the Magistrate of jurisdiction to try them. MURRAY *v.* QUEEN-EMPRESS.

[21 Calc. 103

COMPROMISE.

Col.

1. Construction and Effect of Compromise ... 228
2. Compromise of Suits under Civil Procedure Code ... 229

COMPROMISE—*continued.*

See LIMITATION ACT, S. 7.

[18 Mad. 38

See PAUPER SUIT—APPEALS.

[18 Bom. 464

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[21 Calc. 383

See SPECIFIC PERFORMANCE.

[16 All. 423

——, Effect of.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[19 Bom. 546

See HINDU LAW—PARTITION—REQUISITES FOR PARTITION.

[20 Mad. 256

See MALABAR LAW—ENDOWMENT.

[18 Mad. 1

See MALABAR LAW—JOINT FAMILY.

[18 Mad. 38

See MORTGAGE—TACKING.

[18 Mad. 368

See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS.

[19 Bom. 546

(1) CONSTRUCTION AND EFFECT OF COMPROMISE.

1.—*Suit to set aside compromise—Set-off—Equitable defence.*] *D* was the Manager of a religious endowment called the *Chinchvad Sansthan*.] On his death in 1852, disputes arose between *C* and *G* regarding the management of the *sansthan*, each claiming to be the heir and successor of *D*. After a long litigation they entered into a compromise in 1881, by which a portion of the *sansthan* property, consisting of certain *inam* villages, lands and *varshasans*, were assigned to *G*, and *C* was left in charge of the rest of the *sansthan* property, together with all the rights, privileges and *manpans* enjoyed by the hereditary trustee of the endowment. In 1886 by a decree made in a suit called the "Charity suit," *C* was removed from his office, and the plaintiffs were appointed trustees in his place. In 1889 the plaintiffs filed the present suit to set aside the compromise of 1881, and recover back the *sansthan* property assigned to *G* under that compromise. *G* pleaded, by way of set-off or equitable defence, that if the plaintiffs were at liberty to set aside the compromise, they were bound to restore to him, in lieu of the trust property assigned to him under the compromise, certain private property belonging to his adoptive father which he had given up:—*Held*, that *G* could not claim as a set-off or as an equitable defence to recover from the plaintiffs in question the private property, there being nothing in the compromise to show that there was any exchange of private property for trust property. DHUNDIRAJ GANESH DEV *v.* GANESH.

[18 Bom. 721

COMPROMISE—*continued.*

(2) COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

2.—*Civil Procedure Code* (1882), *s.* 375—*Compromise extending beyond scope of suit—Appeal—Form of decree on compromise.*] In a suit for the partition of a zemindari, the parties effected a compromise in writing which provided, *inter alia*, for certain reliefs which could only have been given by the Court in a suit based upon a different cause of action. The compromise was presented in Court, and a decree was passed embodying the whole of its terms:—*Held* (1) that an appeal lay against the decree; (2) that the decree should have been passed in the terms of such of the provisions agreed upon as related to relief which the Court could have given in the suit; (3) that the decree should be modified accordingly. VENKATAPPA NAYANIM *v.* THIMMA NAYANIM.

[18 Mad. 410

3.—*Civil Procedure Code* (1882), *s.* 375—*Agreement adjusting suit—Power of Court to determine fact of agreement having been made—Reference of suit to arbitration—Award.*] The plaintiff sued the defendant to recover certain property of which she alleged he had taken possession. Subsequently the "matters in difference in the said suit" were by a signed submission paper referred to arbitration. An award was made ordering the defendant to pay to the plaintiff Rs. 6,000, and cancelling a certain account. It also decided the claim of the plaintiff to two ornaments, which was a matter not included in the "submission paper," but had been verbally referred to the arbitrator in the course of the arbitration. The plaintiff now applied that the submission and award should be filed as an agreement adjusting the suit under s. 375 of the Civil Procedure Code (Act XIV of 1882), or, in the alternative, that the award should be filed under s. 525. The defendant disputed the agreement and denied the validity of the award:—*Held*, that under s. 375 of the Civil Procedure Code, the Court had jurisdiction to determine whether, as a fact, the alleged agreement adjusting the suit has been made, and if it was satisfied that it has been made, to record it. Whether that fact should be tried on affidavit or by oral evidence, is entirely for the discretion of the Court. The Court accordingly, holding that the suit had been adjusted by the submission and award, ordered the same to be filed and the adjustment recorded:—*Held*, further, that the Court could make no order as to that portion of the award which dealt with matter not relating to the subject-matter of the suit. A separate application should be made with regard to the ornaments. SAMIBAI *v.* PREMJI PRAGJI.

[20 Bom. 304

4.—*Civil Procedure Code* (1889), *s.* 375—*Power of Court to frame additional issues as to an alleged compromise effected subsequent to the institution of the suit.*] The Civil Procedure Code, s. 375, was intended to meet cases where the parties having agreed to compromise subsequently fall out. The original Court has power to frame

COMPROMISE—*concluded.*

(2) COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*concluded.*

an additional issue to decide whether a lawful compromise has been effected between the parties subsequent to the institution of the suit. APPASAMI NAYAKAN *v.* VARADACHARI.

[19 Mad. 419

5.—*Recording compromise—Agreement made out of Court, and comprising also matters not the subject of suit—Code of Civil Procedure* (1882), *s.* 375.] *Held*, by the majority of the Full Bench, MACLEAN, C. J., and TREVELYAN and BANERJEE, JJ. (O'KINEALY and BEVERLEY, JJ., dissenting) that where the parties to a suit have by an agreement adjusted the subject-matter of the suit, the Court can, by an order made in the suit under s. 375 of the Code of Civil Procedure, direct such agreement to be recorded and make a decree in accordance therewith, even if one of the parties to the agreement object. *Held* (*per* O'KINEALY and BEVERLEY, JJ.) that the Court could not make such an order, the case not being one to which s. 375 applied. *Per* O'KINEALY, J.—The High Court, on its Original Side, exercising the equitable jurisdiction of the High Court of Chancery, would not on a contested motion give a decree of this nature. *Per* BEVERLEY, J.—Section 375 only applies to cases where the adjustment or satisfaction is made *in* Court, and should not be extended to cases adjusted out of Court. BROJODURLABH SINHA *v.* RAMANATH GHOSE.

[24 Calc. 908

6.—*Civil Procedure Code* (1882), *s.* 462—*Minor—Circumstances necessary to make a compromise by a guardian or next friend on behalf of a minor binding on the minor.*] In order to make an agreement or compromise, to which s. 462 of the Code of Civil Procedure applies, a lawful agreement or compromise, it is necessary that the next friend or guardian should ask the Court to consider the proposed terms of the agreement or compromise, and before making the agreement or entering into the compromise, should obtain permission from the Court to enter into the agreement or compromise proposed. The Court should record the fact that such application was made to it; that the terms of the proposed agreement or compromise were considered by the Court; and that, having regard to the interests of the minor, the Court granted leave to the making of the agreement or compromise. From the mere fact that the Court passed the decree in accordance with the compromise, it cannot be inferred that any of those steps preliminary and necessary to the making of the decree have been taken by the Court. KALAVATI *v.* CHEDI LAL.

[17 All. 531

CONCILIATOR UNDER DEKHAN AGRICULTURISTS RELIEF ACT, POWER OF.

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

[19 Bom. 202

CONCURRENT JUDGMENTS ON FACT

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACT.

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACT.

[22 Calc. 609
[L. R. 22 I. A. 51
[24 Calc. 1
[L. R. 23 I. A. 97

CONDITION, BREACH OF.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

[18 Mad. 32

CONDITION PRECEDENT.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[20 Bom. 718

CONDITIONAL SALE.

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[19 Mad. 437

See VENDOR AND PURCHASER—CONDITIONAL SALES.

[17 All. 451

CONDITIONS OF SALE.

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[21 Calc. 566

CONFESSION.

		Col.
1.	Confessions to Magistrate	... 231
2.	Confessions to Police-officers	... 234
3.	Statements to others than Police-officers while in Custody	... 234
4.	Confessions of Prisoners tried Jointly	235

(1) CONFESSIONS TO MAGISTRATE.

1.—*Criminal Procedure Code* (1882), *s.* 364—*Recording statement of accused on examination before Magistrate.*] Where an accused, a Manipuri, was examined before the Magistrate through an interpreter, who obtained his answers in Manipuri, and they were recorded in that language, and the interpreter translated them into Bengali, and they were recorded by the Magistrate in English, and the statement in English and that in Manipuri were found to differ:—*Held*, that the statement recorded in Manipuri must be taken to be the record in the case. Had the Manipuri statement not been made, the Magistrate by recording the statement in English would not have strictly complied with the spirit and intention of s. 364 of the Criminal Procedure Code, though the record in English might not necessarily have been inadmissible in evidence. QUEEN-EMPRESS *v.* SAGAL SAMBA SAJAO.

[21 Calc. 642

2.—*Conditional pardon to prisoner—Power of Sessions Court to try person not committed—Approver, Evidence of—Criminal Procedure Code* (1882), *ss.* 162, 193, 337, 339 *and* 374—*Statement to Police-officers—Deposition without opportunity for cross-examination—Evidence Act, ss.* 24 *and* 30.] Two persons, *J* and *U*, were charged with the murder of *U's* husband, and in the course of the Police inquiry made certain statements to the Police. They were then set up by the Police to a Deputy Magistrate for inquiry. *J* made three statements on the 28th of February, the 1st of March, and the 9th of March, 1894, respectively, two of which were confessions, the third being a withdrawal of such confessions. *U* also made two statements on the 2nd and 9th of March, the first of which was a confession, and the second a withdrawal thereof. On the 20th of April *U* was tendered a pardon, and was thereafter treated as an approver, in which capacity she gave evidence against *J*. *J* was then committed to the Court of Sessions to take his trial, *U* being sent up as an approver. In the Sessions Court *U* resiled from her deposition before the committing Magistrate, and was then and there treated as an accused person, and placed on her trial with the other accused, and the deposition aforesaid was put in as evidence. Both accused were convicted mainly on their confessions, *J* of murder, and *U* of abetment of murder:—*Held*, that the conviction of *U* was bad, the Court of Sessions having had no jurisdiction to try her as she was never committed to to that Court by any competent Magistrate:—*Held*, that the conviction of *J* was also bad (1) Because *U's* statement to the Police was not admissible in evidence. (2) Because her statements on the 2nd and 9th of March were not under the circumstances admissible in evidence, as she was not being legally tried jointly with him for the same offence. (3) That her deposition on the 24th of April was not admissible in evidence, because, apart from other reasons, *J* had no opportunity to cross-examine her. (4) Because *J's* confession under the circumstances was not a free and voluntary admission of guilt:—*Held*, on the whole case that independently of the aforesaid statements and confession there was not sufficient evidence to justify the conviction. *Queen-Empress* v. *Rama Tevan*, I. L. R. 15 Mad. 352, commented on. QUEEN-EMPRESS *v.* JAGAT CHANDRA MALI.

[22 Calc. 50

3.—*Criminal Procedure Code* (1882), *s.* 364—*Confession not recorded in language in which it is given, Admissibility of, in evidence.*] The confession of an accused person made in Bengali, the language in which the accused was examined, was recorded in English. The committing Magistrate, in his evidence in Court, said that he could not write Bengali well, and that there was no *mohurrir* with him at the time when the confession was recorded:—*Held*, the provisions of s. 364 of the Criminal Procedure Code had been sufficiently complied with. *Jai Narayan Rai* v. *Queen-Empress*, I. L. R. 17 Calc. 862, distinguished. QUEEN-EMPRESS *v.* RAZAI MIA.

[22 Calc. 817

CONFESSION—*continued.*

(1) CONFESSIONS TO MAGISTRATE—*contd.*

4.—*Confession to Presidency Magistrate—Statement of prisoner made before inquiry—Statement of prisoner made in the course of or after inquiry—Criminal Procedure Code* (1882), *ss.* 164, 364 *and* 533—*Examination of accused person.*] The sections comprised in Chap. XIV of the Criminal Procedure Code (Act X of 1882) (except s. 155) do not apply to the Police in the Presidency towns, and consequently a statement or confession made to a Presidency Magistrate does not come within s. 164, and the procedure prescribed in regard to the recording of statements or confessions by that section, and (by reference) s. 364, does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. But such statement or confession, though not taken under s. 164, is admissible in evidence against the prisoner. *Queen-Empress* v. *Nilmadhub*, I. L. R. 15 Calc. 565, followed on this point. During an inquiry bfore a Presidency Magistrate after the evidence for the prosecution was taken, the Magistrate examined the accused under ss. 209 and 342 of the Criminal Procedure Code. The accused was examined in Marathi, but the questions and answers were recorded in English. The Magistrate deposed at the trial that it was the invariable practice in his Court to take down depositions in English, and that he could not himself have accurately recorded the prisoner's statement in Marathi. He also deposed that the statement was correctly recorded in English, and that each question and answer when recorded was interpreted to the accused in Marathi, and that the accused then made his mark at the end of the recorded statement. He further stated that there were at hand native subordinate officials of his Court who could have recorded the statement in Marathi, but that he himself had not sufficient knowledge of Marathi as to be able to read what was written by such a subordinate, or to satisfactorily check or test the correctness with which it represented the statement made by the accused:—*Held*, that, assuming that it was practicable to record the statement in Marathi, and that consequently it was irregular with reference to s. 364 of the Code to record it in English, the statement was nevertheless admissible in evidence under s. 533, the irregularity not having injured the accused as to his defence on the merits. *Jai Narayan Rai* v. *Queen-Empress*, I. L. R. 17 Calc. 862, dissented from. QUEEN-EMPRESS *v.* VISRAM BABAJI.

[21 Bom. 495

5.—*Confession afterwards retracted—Necessity of corroborative evidence—Practice.*] A retracted confession, if proved to be voluntarily made, can be acted upon along with the other evidence in the case. There is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law. *Queen-Empress* v. *Ranji*, I. L. R. 10 Mad. 295; and *Queen-Empress* v. *Bharmappa*, I. L. R. 12 Mad. 123, dissented from; *Regina* v. *Balvant*, 11 Bom. 137; and *Queen-Empress* v. *Sangappa*, Bom. H. C. Cr. Rulings of 25th April 1889, followed. QUEEN-EMPRESS *v* GHARYA.

[19 Bom. 728

CONFESSION—*concld.*

(1) CONFESSIONS TO MAGISTRATE—*concld.*

6.—*Confession subsequently retracted, Effect of—Criminal Procedure Code* (1882), *s.* 164.] It is unsafe for a Court to rely on and act upon a confession which has been retracted unless upon a consideration of the whole evidence in the case the Court is in a position to come to the unhesitating conclusion that the confession is true: that is to say, usually, unless the confession is corroborated by credible independent evidence. *Queen-Empress* v. *Ranji*, I. L. R. 10 Mad. 295, referred to. QUEEN-EMPRESS *v.* MAHABIR.

[18 All. 78

(2) CONFESSIONS TO POLICE-OFFICERS.

7.—*Confession made to a Police-officer by accused while in Police custody—Evidence Act* (*I of* 1872), *ss.* 25 *and* 26.] A statement made to a Police-officer by an accused person while in the custody of the Police, if it is an admission of a criminating circumstance, cannot be used in evidence under ss. 25 and 26 of the Evidence Act (I of 1872). QUEEN-EMPRESS *v.* JAVECHARAM.

[19 Bom. 363

8.—*Police custody—Jailor in a Native State—Evidence Act* (*I of* 1872), *s.* 26.] The custody of the keeper of a jail in a Native State, who is not a Police-officer, does not become that of a Police-officer, merely because his subordinates, the warders of the jail, are members of the Police force of that State. In the absence of any suggestion of a close custody inside the jail, such as may possibly occur when an accused person is watched and guarded by a Police-officer investigating an offence, s. 26 of the Evidence Act (I of 1872) does not exclude such a jailor from giving evidence of what the accused told him while in jail. QUEEN-EMPRESS *v.* TATYA.

[20 Bom. 795

(3) STATEMENTS TO OTHERS THAN POLICE-OFFICERS WHILE IN CUSTODY.

9.—*Evidence Act* (*I of* 1872), *s.* 26—*Statement of accused to friend—Statement made in temporary absence of Police.*] A person under arrest on a charge of murder was taken in a *tonga*, from the place where the alleged offence was committed, to Godhra. A friend drove with her in the *tonga* and a mounted policeman rode in front. In the course of the journey, the policeman left the *tonga* and went to a neighbouring village to procure a fresh horse, the *tonga* meanwhile proceeding slowly along the road for some miles without any escort. In the absence of the policeman, the accused made a communication to her friend with reference to the alleged offence. At the trial it was proposed to ask what the prisoner had said, on the ground that she was not then in custody, and that s. 26 of the Evidence Act (I of 1872) did not apply:—*Held*, that, notwith-

CONFESSION—*continued.*

(3) STATEMENTS TO OTHERS THAN POLICE OFFICERS WHILE IN CUSTODY—*concld.*

standing the temporary absence of the policeman, the accused was still in custody, and the question must be disallowed. QUEEN-EMPRESS *v.* LESTER.

[20 Bom. 165

(4) CONFESSIONS OF PRISONERS TRIED JOINTLY.

10.—*Confession made by person charged jointly with another for separate offences arising out of one transaction. Admissibility of, as against the other—Evidence Act (I of 1872), s. 30.*] In order to constitute an offence under s. 373 of the Penal Code, it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be with reference to employment either immediate or at some definite, and not very remote, future period, but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will while still a minor under the age of 16 years, be employed for that purpose, although the point of time for such employment may be remote by reason of her physical incapacity for the purpose. *H*, the father of two girls, twins about a year old, sold one of them to *K*, a prostitute, for Rs. 9, and within ten days of such sale also sold her the other for Rs. 14. *K* was shown to have previously purchased another child whom she had brought up from her infancy, and who was then living with her and leading the life of a prostitute. Both *H* and *K* made confessions as to the guilty knowledge and intention with which the sale of the two children was made. *K's* confession was made within two hours after her arrest, and immediately thereafter she was committed to *hajat* for seven days. On the seventh day, on being brought up for trial before the Deputy Magistrate, she retracted her confession and assigned an innocent reason for her purchase of the girl. *H* and *K* were tried jointly, *H* being charged with an offence under s. 372, *viz.*, selling the girls for the purpose of prostitution, and *K* with an offence under s. 373, *viz.*, buying for the same purpose. Neither was charged with abetting the other. The two confessions were used as evidence:—*Held*, that having regard to the circumstances under which the confession of *K* was given and retracted, it was open to suspicion, and could not safely be acted upon, and that the confession made by *H* was not legally admissible against her, as they were not being tried jointly for the same offence. DEPUTY LEGAL REMEMBRANCER *v.* KARUNA BAISTOBI.

[22 Calc. 164

11.—*Evidence Act (I of 1872), s. 30—Confession of co-prisoner—Joint trial—Plea of guilty.*] *A* and *B* were charged with murder. A pleaded guilty, but he was not convicted or sentenced till the conclusion of the trial of his follow-prisoner *B*. The Sessions Judge, holding that both the accused were jointly tried for the same offence, took into consideration as against *B* the confessions made by *A*, and convicted both of murder:—*Held*, that

CONFESSION—*concluded.*

(4) CONFESSIONS OF PRISONERS TRIED JOINTLY—*concluded.*

after *A* had pleaded guilty, he could not be treated as being jointly tried with *B*. *A's* confessions were therefore not admissible against *B* under s. 30 of the Indian Evidence Act (I of 1872). QUEEN-EMPRESS *v.* PAHUJI.

[19 Bom. 195

12.—*Evidence Act (I of 1872), s. 30—Statements of co-accused who pleaded guilty—Joint trial.*] Where two out of several persons on their trial in a Court of Session on a joint charge pleaded guilty and made certain statements to the Court, it was *held* that such statements could not be taken into consideration as evidence against the other accused persons, inasmuch as after pleading guilty, the persons making those statements were no longer on their trial. QUEEN-EMPRESS *v.* PIRBHU.

[17 All. 524

13.—*Evidence Act (I of 1872), s. 30—Corroboration in material particulars.*] Where the only evidence against two prisoners accused of murder directly implicating them in the commission of the crime consisted of confessional statements made by them before the committing Magistrate, which were subsequently retracted, and the statements in such confessions were corroborated in material particulars by other evidence on the record:—*Held*, that the evidence was sufficient to support a conviction. QUEEN-EMPRESS *v.* RARU NAYAR.

[19 Mad. 482

CONFISCATION OF PROPERTY.

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[17 All. 456

CONSIDERATION.

See CIVIL PROCEDURE CODE, S. 257A.

[17 Mad. 382

See CONTRACT ACT, S. 2.

[20 Bom. 755

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

[23 Calc. 645

See CONTRACT ACT, S. 25.

[17 All. 264

[20 Bom. 755

See CONTRACT ACT, S. 63.

[19 Mad. 398

See EXECUTOR.

[22 Calc. 14

See VENDOR AND PURCHASER—CONSIDERATION.

[19 All. 35

——, Failure of.

See LIMITATION ACT, ART. 97.

[18 Mad. 173

CONSIDERATION—*concluded.*

—— for promissory note, Suit upon.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[17 Mad. 262

——, Illegal.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[20 Mad. 84

—— in part illegal.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—COMPOUNDING CRIMINAL OFFENCE.

[18 Mad. 189

See VENDOR AND PURCHASER—CONSIDERATION.

[19 All. 35

——, Obligation to repay.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

[18 Mad. 32

——, Payment of.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[18 All. 168

——, Proof of.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF AND CONSIDERATION FOR.

[20 Bom. 367
[23 Calc. 950

CONSIGNOR AND CONSIGNEE.

—Goods consigned to agent for sale on commission—Hundis drawn against goods and paid by agent—Railway receipts sent to agent—Equitable assignment of goods by consignor—Goods attached by judgment-creditor of consignor—Claim by agent.] One *P* at Viramgam consigned certain bags of seed to *V H & Co.* at Bombay for sale on commission and drew *hundis* against the goods for Rs. 3,200, which at his request *V H & Co.* accepted and paid on receiving the railway receipts by post. The goods were to be sold on arrival on *P's* account, and the proceeds credited to him as against the advances made by the payment of the *hundis*. On the arrival of the goods at Bombay, they were attached by *B S & Co.*, who had obtained decrees against *P*:—*Held*, that *V H & Co.* were entitled to the goods. They had made specific advances against the goods. *B S & Co.*, as attaching creditors, occupied the same position as *P* himself, and had no better claim to the goods than he had, and if he had attempted to prevent the goods reaching the hands of *V H & Co.*, who at his request had made specific advances against them, he would have been restrained by injunction. VELJI HIRJI *v.* BHARMAL SHRIPAL.

[21 Bom. 287

CONSOLIDATION OF CLAIMS.

See PRACTICE—CIVIL CASES—ADMIRALTY COURT.

[22 Calc. 511

CONSULAR COURT AT ZANZIBAR.

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 480.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[19 Bom. 741

CONTEMPT OF COURT.

Col.
1. General Cases ... 238
2. Penal Code s. 174 ... 239

See RECEIVER.

[22 Calc. 648

(1) GENERAL CASES.

1.—*Punishment by imprisonment—Practice—Civil Procedure Code* (1882), *s.* 493.] On 1st September, 1890, in an administration suit in which *G*, as executor of a will, was defendant, a receiver was appointed, and *G* was ordered to deliver to the receiver certain Government promissory notes of the value of Rs. 45,000 belonging to the estate, which was the subject-matter of the suit. He did not obey the order, and absconded from Bombay; and, on 16th March, 1891, in his absence, a rule for his attachment for contempt was made absolute. It was afterwards ascertained that he had used the notes for his own purposes. A warrant was issued for his arrest, and he was apprehended; and, on 23rd April, 1891, he was convicted of criminal breach of trust and sentenced to eighteen months' imprisonment. Previously to his trial (*viz.*, on the 9th April, 1891), he had been committed to jail for contempt of the order of September, 1890, so that after his conviction he was in jail both under his sentence and under the order for contempt. On the 4th October, 1892, the Court passed a money decree in the administration suit against the defendant for Rs. 80,000 and costs. The sentence passed upon the defendant for the criminal offence expired on the 22nd October, 1892. Applications for his release from imprisonment under the order for contempt were made in December, 1892, and 10th April, 1893, but were refused. Counsel now moved again for his release:—*Held*, that the defendant should be released from imprisonment. The right of the plaintiff to demand the promissory notes for him was merged in the money-decree. The right to demand the notes was gone, and the order that he should deliver them up to the receiver had ceased to be operative. The commitment, in so far as it was intended to enforce obedience to the order of the 1st September, 1890, could no longer be continued on that ground. It was the decree now, and not the order which constituted the measure of the obligation between the parties. That was a simple money-decree, and it was contrary to the expressly declared will of the Legislature and to all modern principle and precedent to keep a defendant under commitment for contempt to compel him to pay a money-decree. If the attachment order was re-

CONTEMPT OF COURT—*concluded.*

(1) GENERAL CASES—*concluded.*

garded as a punishment for the defendant's offence in not having delivered up the notes, the punishment should be commensurate with the offence. Imprisonment under it could not be indefinite. By s. 493 of the Code of Civil Procedure (Act XIV of 1882), the Legislature indicated that such imprisonment should not extend beyond six months. The defendant had, however, been in jail for more than twenty months. For the criminal offence he had suffered the punishment to which he was sentenced, and the Court would not be justified in indirectly adding to its duration. ADVOCATE-GENERAL OF BOMBAY *v.* GANGJI AKHAI.

[19 Bom. 152

(2) PENAL CODE, S. 174.

2.—*Non-attendance in obedience to an order of a public servant—Absence of public servant.*] The offence contemplated by s. 174, Penal Code, is an omission to appear at a particular time and at a particular place before a specified public functionary. Where, therefore, the public servant was absent on the date fixed in a summons:—*Held*, that the person summoned could not be convicted under this section, though he failed to attend, having the intention to disobey the summons. QUEEN-EMPRESS *v.* KRISHTAPPA.

[20 Mad. 31

CONTINUING OFFENCE.

See KIDNAPPING.

[19 All. 109

CONTRACT.

		Col.
1.	Construction of Contracts	... 241
2.	Breach of Contract	... 245
3.	Wagering Contracts	... 246

See ACQUIESCENCE.

[17 Mad. 275

See CASES UNDER CONTRACT ACT.

See CUSTOM.

[20 Mad. 275

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 Bom. 43

See PLEADER—REMUNERATION.

[17 Mad. 306

See CASES UNDER RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

——, Breach of.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

[17 Mad. 168
[21 Bom. 175

CONTRACT—*continued.*

See HINDU LAW—MARRIAGE—BETROTHAL.

[21 Bom. 23

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.

[18 Bom. 702

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 All. 400

See LIMITATION ACT, ART. 115.

[19 Mad. 391

See REGISTRATION ACT, S. 49.

[17 Mad. 456

——, Continuing breach of.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[19 All. 39

——, Construction of.

See COMPANY—RIGHTS OF SHAREHOLDERS.

[19 Bom. 1
[L. R. 21 I. A. 139

See LIMITATION ACT, ART. 115.

[20 Bom. 8

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—DAMAGES FOR BREACH OF CONTRACT.

[19 Mad. 304

——, Gratuitous.

See EXECUTOR.

[22 Calc. 14

——, Illegal.

See BENGAL TENANCY ACT, S. 29.

[24 Calc. 895

See COMPANY—FORMATION AND REGISTRATION.

[19 Mad. 31, 200
[20 Mad. 68

See CASES UNDER CONTRACT ACT, S. 23.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

[17 Mad. 78

See EXECUTOR.

[22 Calc. 14

——, Implied.

See MADRAS RENT RECOVERY ACT, S. 11.

[17 Mad. 43, 50, 54, 73

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTION OF FACT.

[17 Mad. 43

—— of service.

See ACT XIII OF 1859.

[21 Calc. 262

CONTRACT—*continued.*

——, of service, Breach of.

See WARRANT OF ARREST.

[20 Mad. 235, 457

——, Oral, suit for money payable under.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[20 Mad. 481

——, Privity of.

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[21 Bom. 311

——, Rescission of.

See CONTRACT ACT, S. 39.

[18 Mad. 126

See SPECIFIC RELIEF ACT, S. 35.

[18 Bom. 342

See VENDOR AND PURCHASER—PURCHASERS, RIGHTS OF.

[20 Bom. 522

——, Suit on.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 All. 400

(1) CONSTRUCTION OF CONTRACTS.

1.—*Delivery order for goods deliverable monthly—Sub-contract—Tender—Repudiation of contract—Damages.*] The defendant entered into a contract with the Union Mills for the purchase of "90,000 gunny bags at Rs. 21-8 per 100 bags, delivery from October to March, each month 15,000 bags." Subsequently the defendant contracted to sell to the plaintiffs these 90,000 bags, at Rs. 21-2 per 100 bags, delivery from October to March, 15,000 each month, buyers to pay difference cash against delivery order on mills." In August the defendant made out in the plaintiffs' favour a delivery order directing the mills to deliver 90,000 bags on receiving payment for the same at Rs. 21-8 per 100 bags, and on the same day sent to the plaintiffs a bill showing the amount of difference payable to him by them. The plaintiffs refused the delivery order on the ground that it had not been accepted by the mills; but, on a subsequent tender of the order and bill, they offered, on the 5th September, to pay the amount of difference on receiving a delivery order accepted by the mills. The defendant treated the contract as at an end, and sold the bags in the market. In a suit for damages:—*Held*, that the defendant sold not only a delivery order, but the right to obtain from the mills 90,000 bags, deliverable in lots of 15,000 per month, after payment of the difference; and impliedly undertook that the mills would accept the delivery order and deliver the goods in terms thereof when presented; that the plaintiffs were entitled to get the delivery order at any reasonable time

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*contd.*

before the first monthly instalment fell due; and further, that the defendant was not entitled to repudiate the contract after the plaintiffs' offer of the 5th September, and having done so, was liable in damages. RAMDEO *v.* CASSIM MAMOOJEE.

[21 Calc. 173

2.—*Executory contract involving personal considerations—Assignment of contract—Contract consisting of distinct contracts with separate parties.*] Seven salt manufacturers, the defendants, contracted with *A* to manufacture and store in the factory in the name of and for the benefit of *A* such quantities of salt as he might require them to manufacture each season for seven years, in consideration of *A's* paying them at the rate of Rs. 11-8-0 per *garce* of salt (four months' credit after each delivery being allowed to *A*), and of his paying Government taxes and dues, and executing all but petty repairs in the defendant's factory. *B* was a party with *A* to the contract though he was not expressly mentioned therein. *A* assigned his share in the contract to *C*. *B*, as first plaintiff, and *C*, as second plaintiff, brought a suit against the defendants alleging that the defendants had failed to fulfil their part of the contract during the second year of its continuance (1886), and praying (1) that all the defendants be directed to deliver to the plaintiffs the salt collected during 1886; (2) that defendants 2, 4 and 7 should be held liable for any damages plaintiffs might suffer through a fall in the price of salt. The Court of first instance, having held that the contract contained seven separate and distinct contracts, each defendant having contracted with reference to his own pans only, decreed (1) that the seven defendants should pay damages at the rate of Rs. 5-12-0 per *garce* for the salt collected by each during the years 1886 to 1889, leaving the quantity to be ascertained in the execution of the decree; (2) that the defendant should pay the plaintiff's costs. On appeal the District Judge modified the decree by fixing the rate of damages at Rs. 45-10-0 for each *garce* of salt:—*Held*, on appeal, that *A* was not competent to assign his interest in the contract to the second plaintiff, since the contract was based on personal considerations, and that the assignment of it as an executory contract was invalid without the consent of the defendants. *Farrow* v. *Wilson*, L. R. 4 C. P. 744; *Humble* v. *Hunter*, 12 Q. B. 310; *Arkansas Valley Melting Company* v. *Belden Mining Company*, 127 U. S. R. 379; followed. NAMASIVAYA GURUKKAL *v.* KADIR AMMAL.

[17 Mad. 168

3.—*Contract to sell from* 2,500 *to* 3,500 *tons of coal—Breach of contract—Non-delivery of coal—Damages.*] On the 18th May, 1893, the defendants sold to the plaintiffs "the entire cargo of coal per steam-ship ——, May shipment, *vid* canal, amounting to 2,500 to 3,500 tons or thereabouts." The defendants intended a certain steam-ship called the *Ethelaida*, which carried a cargo of 3,395 tons of coal, to satisfy this contract. This ship, however, did not load in

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*contd.*

May, and consequently her cargo did not fulfil the condition of the contract. From the day of making the contract, the plaintiffs had been urging the defendants to declare the name of the vessel in which the coal contracted for was to be shipped. On the 14th June, the defendants by letter informed the plaintiffs that the "vessel chartered for their May shipment" had not loaded in May, and they offered to cancel the contract. On the same day, however, and about an hour after the plaintiffs had received this letter, and before they had replied to it, the defendants sent them another letter as follows:—"We have now been informed that the boat our coals have been loaded in is the *Ethelaida*, and we now beg to declare it." Correspondence subsequently passed between the parties. On the 15th June, the plaintiffs wrote to the defendants as follows:—"Please inform us finally what you intend. In case the *Ethelaida* is declared as bringing coals sold to us under contract of 18th May, please let us know the date of her sailing, landing, and the particular date of her arrival in Bombay, and also how much coal she has on board." On the following day the defendants replied: "The *Ethelaida* is the boat chartered for the cargo we sold you.....We do not positively know whether she commenced to load in May or June. She was expected to load about 3,300 tons." On the 28th June, the defendants wrote definitely stating that the "*Ethelaida* did not load in May." The plaintiffs refused her cargo, and sent in a statement of their alleged loss calculated upon 3,300 tons, the amount stated to be the cargo of the *Ethelaida* in the defendants' letter of the 14th June:—*Held*, that the damages must be calculated upon a cargo of 2,500 tons only. The *Ethelaida* was never incorporated into the contract. The defendants declared her against the contract; but, after they had informed the plaintiffs that she had not loaded in May, the plaintiffs refused her cargo. The contract, which the defendants failed to fulfil, was a contract to deliver the *Ethelaida* cargo, which they were always ready and willing to deliver. The option rested with the defendants whether they would deliver 2,500 or 3,500 tons, or any intermediate quantity, and upon no principle could the Court exercise that option for them and declare that they were liable to deliver more than a cargo of 2,500 tons. CURSETJI JEHANGIR KHAMBATTA *v.* CROWDER.

[18 Bom. 299

4.—*Contract Act (IX of 1872), s. 39—Shipment at monthly intervals.*] The defendant agreed to purchase from the plaintiffs 120 cases of condensed milk which were to be shipped in London and delivered in Madras. The agreement stipulated for shipment in six lots of twenty cases each at monthly intervals, but it contained a proviso, whereby the plaintiffs were excused from monthly shipments if space in ships sailing for Madras were not available. The second shipment was not made within one month from the date of the first shipment; thereupon the defendant repudiated the contract:—*Held* (1) that the interval of

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*contd.*

time contemplated in the contract was one month more or less, regard being had to the time which it might be reasonable to allow to the plaintiffs for finding a steamer available for the required shipment; (2) that the plaintiffs having failed to make the second shipment by a steamer of which they might have availed themselves, the defendant was justified in rescinding the contract. VOLKART BROTHERS *v.* RUTNAVELU CHETTI.

[18 Mad. 63

5.—*Sale of goods—Special place of delivery "to be mentioned hereafter"—Assessment of damages—Contract Act (IX of 1872), ss. 49, 94 and 231.*] Bought and sold notes of Purneah indigo seed provided: "The seed to be delivered at any place in Bengal in March and April 1891." It was added, "the place of delivery to be mentioned hereafter." The buyer made mention of this on the 20th March, 1891, in a letter to the broker for both parties. This letter, specifying Howrah Railway Station as the place, was forwarded to the vendor, who replied that he would deliver at his own godowns at Sulkea. This the buyer declined. The vendor and the buyer each insisting that the place named by him was the proper one for delivery, the buyer refused to accept at the vendor's godowns, or at any place other than Howrah station. The vendor remained for a certain time ready and willing to deliver at his godowns at Sulkea; and the buyer not accepting delivery at that place, the vendor declared the contract cancelled. The buyer then sued him for breach of the contract to deliver at the place mentioned by the buyer. On the question whether the vendor had discharged his liability by readiness and willingness to deliver at his own godowns at Sulkea:—*Held*, that the choice of place given originally by the contract to the buyer, subject only to the express contract that it must be in Bengal, and to the implied one that it must be reasonable, had not been converted, by the words about "mention" thereafter, into a deferred question to be settled by a subsequent agreement. The buyer, according to the contract already subsisting, had the right to fix the place. There was a special promise in the contract as to the delivery, and to complete its terms nothing more was required than a mention by the buyer of a reasonable place within Bengal. This had been made by him. The contract therefore did not fall within s. 94 of the Indian Contract Act (IX of 1872) dealing with cases where there has been no special promise as to delivery, and fixing the place of production as the place for delivery; but rather resembled what was contemplated in s. 49. And the buyer was entitled to damages on the contract. GRENON *v.* LACHMI NARAIN AUGURWALA.

[24 Calc. 8

[L. R. 23 I. A. 119

6.—*Sale of goods—Contract to supply goods at fixed price—Duty imposed on material subsequently to date of contract—Liability to supply goods—Indian Tariff Act (VIII of 1894), s. 10.*] On 2nd November, 1894, the defendant contracted to

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*concld.*

supply the plaintiff with a certain quantity of *dhotars* made of European or Egyptian yarn No. 80 at the rate of 225 pairs each month for a period of one year. In January, 1895, an import duty of five per cent was imposed by Government on the yarn. The defendant thereupon declined to supply the *dhotars* unless the plaintiff paid the duty in addition to the contract price:—*Held*, that under s. 10 of Act VIII of 1894 the defendant could call on the plaintiff to pay the duty which he had paid on the yarn, that is, he could add so much to the contract price as would be equivalent to the duty which he himself had paid. The question was whether the *dhotars* supplied to the plaintiff were actually made out of yarn on which duty had been paid by the defendant. TRIKAMLAL JAMNADAS *v.* KALIDAS DALPATRAM.

[21 Bom. 628

(2) BREACH OF CONTRACT.

7.—*Building contract—Breach of contract—Power of re-entry—Certificate of architect, how far conclusive.*] By a building contract entered into between plaintiff and defendants, it was agreed that plaintiff should erect certain premises on behalf of the defendants at the rates specified in the bill of quantities annexed. The agreement provided that defendants should pay to plaintiff at the rate of 90 per cent. upon the value of work executed and materials laid down as certified by the architect, and that, should defendants make default in so doing for a period beyond fourteen days after the amount thereof shall have been certified, plaintiff should be at liberty to suspend the works and require payment of all works executed and materials laid down. The agreement further provided that, if the contractor shall suspend or delay the performance of his part of the contract, the defendants might, through their architect, give notice requiring the works to be proceeded with, and in case of default on the part of the contractor for a period of twenty-eight days might enter upon and take possession of the premises. It was further provided that the decision of the architect, with respect to the amount, state, and condition of the works actually executed or in respect to any questions that may arise, shall be final. During the continuance of the works, disputes arose as to the amount due to the plaintiff, although certified by the architect as agreed, and in consequence plaintiff refused to continue the work, whereupon defendants after giving due notice entered upon the premises. Plaintiff sued for damages in consequence of the defendants having taken possession and for the balance due on the accounts:—*Held* (1) that the defendants committed a breach of the contract by refusing to pay the full amount due under the architect's certificate; (2) that the plaintiff thereupon rescinded the contract, and that, therefore, defendants were entitled after due notice to enter and take possession; (3) that in the absence of proof of collusion between the architect and the plaintiff, the defendants were bound by the architect's

CONTRACT—*continued.*

(2) BREACH OF CONTRACT—*concluded.*

certificate as to the amount due to the plaintiff. KUPPUSAMI NAIDU *v.* SMITH & Co.

[19 Mad. 178

8.—*Sale of unascertained goods—Appropriation by vendor—Passing of property—Power of resale—Contract Act (IX of 1872), s. 107—Measure of damages.*] The contract was for sale, by description of 15 bales of grey shirtings (to arrive) at an agreed price. It was found that the 15 bales, which were tendered by the plaintiff, did answer the description, but the defendants refused to accept them, alleging that they were wrongly marked. Under the contract of sale, the plaintiffs had an express power of re-sale. After giving notice to the defendants, they had the goods re-sold at auction and bought them in themselves as the highest bidders. Then they brought an action for the difference between the contract price and the price realized at the re-sale, framing the suit as for loss on resale and not for damages for breach of the contract:—*Held*, the defendants having refused to accept the goods, the property in them remained in the vendors (plaintiffs), and the re-sale had no effect whatever. To such a case as this neither s. 107 of the Contract Act nor the proviso for re-sale in the contract itself can have any application. Such power is required when the property in the goods has passed to the purchaser, subject to the lien of the vendor for the unpaid purchase-money. The plaintiffs were entitled to receive only the difference between the market price of the day and the contract price, and that was the true measure of damages. YULE & Co. *v.* MAHOMED HOSSAIN.

[24 Calc. 124

9.—*Appropriation by vendor—Passing of property—Power of resale—Contract Act (IX of 1872), s. 107—Measure of damages.*] The plaintiff under several contracts with the defendant produced by manufacture goods answering to the description of the contracts, and appropriated them to the several contracts. On notice of the production of the goods being given to the defendant, he directed the goods so appropriated to be marked and despatched for shipment according to certain instructions. The plaintiffs carried out these instructions, but the goods could not be shipped, as the vessels in which they were to be shipped were not available at their usual place:—*Held*, the ownership in the goods was transferred to the defendant, and the plaintiffs became entitled under s. 107 of the Contract Act, after due notice, to resell them on the defendant's refusal to take delivery and to recover as damages, the difference between the contract price of the goods and the price at which they were resold. CLIVE JUTE MILS Co. *v.* EBRAHIM ARAB.

[24 Calc. 177

See PRAG NARAIN *v.* MULCHAND.

[19 All. 535

(3) WAGERING CONTRACTS.

10.—*Contracts to buy and sell Government promissory notes—Contract Act (IX of 1872), s. 30—*

CONTRACT—*continued.*

(3) WAGERING CONTRACTS—*continued.*

Onus of proof.] *A*, on various occasions, agreed to sell to *B* (a *soukar*) certain amounts of Government of India promissory notes, amounting in all to 4½ lakhs, for delivery on the following 30th of November. On the 28th of November, *B* agreed to sell and *A* to buy 4½ lakhs worth of the notes for delivery on the 30th of November. *A* did not perform his contract to sell, and *B* sued him for damages, amounting to Rs. 7,109-6-0, being the difference between the price at which he (*B*) had agreed to buy, and the price at which he had agreed to sell. *B* denied that the transactions were *bonâ fide* contracts made in the ordinary way of business, and pleaded that the real contract was only to pay differences as ascertained by the price of the Government paper on the 30th of November, and that such a contract being, by way of wager, was void under s. 30 of the Contract Act:—*Held*, on the evidence, that neither partly intended *bonâ fide* purchases and sales for delivery, and that, therefore, the contract was void as a wagering contract:—*Held*, on appeal, that the burden of proof that the agreements were wagers, *i.e.*, that they were not in substance what they were in form, lay on *A*, as the party so alleging. *Per* MUTTUSAMI AYYAR, J., that, it being proved on the evidence that it was the defendant's intention at the time he contracted to sell to pay differences only, the plaintiff either knew of this intention or he did not. In the former case the contract was a wager, and therefore void, and in the latter, there was no *consensus* as to a matter which was of the essence of the contract, and therefore no valid contract. *Per* BEST, J., that a contract is not a wagering contract unless it is the intention of *both* parties at the time of entering into the contracts to call for or give delivery from or to each other (see *Tod* v. *Lakshmidas Purshotamdas*, I. L. R. 16 Bom. 441; and *Grizewood* v. *Blane*, 11 C. B. 526), and that no such common intention having been proved, the contract was a valid one. ESHOOR DOSS *v.* VENKATASUBBA RAU.

[17 Mad. 480

Held, in the same case, on appeal under the Letters Patent, by COLLINS, C.J., and PARKER, and SUBRAMANIA AYYAR, JJ., that the plaintiff was not entitled to recover for the reason that the agreement sued on was void under the Contract Act, s. 30, as being a gambling transaction. ESHOOR DOSS *v.* VENKATASUBHA RAU.

[18 Mad 306

11.—*Contracts to buy and sell Government promissory notes—Contracts for payment of differences only—Contract Act (IX of 1872), s. 30.*] *A* having on various occasions sold certain amounts of Government promissory notes to *B*, aggregating on the whole to 2½ lakhs, for delivery on 30th November, 1891, *B* on the 28th of November sold the same amount to *A* for delivery on the 30th November. On that day *B*, through his attorneys, called upon *A* to retain the 'paper' contracted to be sold by *A* to *B* in respect of that contracted to be sold by *B* to *A*, and to pay the differences in the prices of the two contracts to

CONTRACT—*concluded.*

(3) WAGERING CONTRACTS—*concluded.*

B, and subsequently sued him for the amount:—*Held*, that, on the evidence, *B* having admitted that the original contract sued on was for payment of differences only, it was a wagering contract and therefore void:—*Held*, on appeal:—*Per* MUTTUSAMI AYYAR, J., that the above judgment should be confirmed. *Per* BEST, J., that on the evidence it was not proved, that, at the time of entering into the original contract, the intention of both parties was merely for payment of differences, and that consequently the contract was not a wagering contract but a valid one. VENKATACHELLALA CHETTI *v.* VENKATA SUBHA RAU.

[17 Mad. 496

CONTRACT ACT (IX OF 1872).

——, ss. 2 (d) and 25.—*Services rendered during the defendant's minority at his desire and continued at his request after his majority—Agreement to compensate for services.*] Services rendered at the desire of a minor expressed during his minority and continued at the same request after his majority form a good consideration for a subsequent express promise by him in favour of the person who rendered the services. By s. 2 (*d*) of the Contract Act, services already rendered at the desire of the promisor are placed on the same footing with such services to be rendered and constitute a good consideration for a definite agreement. Cases where a person without the knowledge of the promisor or otherwise than at his request does the latter some service, and the promisor undertakes to compensate him for it, are covered by s. 25 of the Contract Act (IX of 1872); in them the promise does not need a consideration to support it. SINDHA SHRI GANPATSINGJI HIMATSINGJI *v.* ABRAHAM.

[20 Bom. 755

——, s. 11.

See DOMICILE.

[19 Bom. 697

See MINOR—LIABILITY ON CONTRACTS.

[19 Bom. 697

See SPECIFIC PERFORMANCE.

[18 Mad. 415

——, s. 16.

See GIFT.

[23 Calc. 15

——, s. 17.

See GIFT.

[23 Calc. 15

See REGISTRATION ACT, s. 35.

[21 Calc. 872

——, s. 23.

Col.

1. Illegal Contracts ... 249
   (*a*) Generally ... 249
   (*b*) Against Public Policy ... 250
   (*c*) Compounding Criminal Offence ... 251

See BENGAL TENANCY ACT, s. 29.

[24 Calc. 895

CONTRACT ACT (IX OF 1872)—*contd.*

See EXECUTOR.

[22 Calc. 14

(I) ILLEGAL CONTRACTS.

(*a*) GENERALLY.

1.—s. 23.—*Agreement by plaintiff and defendant not to bid against each other at an auction.*] There is nothing necessarily unlawful in two or more persons agreeing not to bid against one another at an auction-sale. HARI BALKRISHNA *v.* NABO MORESHVAR.

[18 Bom. 342

2.—s. 23.—*Lease of a farm to retail opium at certain shops in a district—Sub-lease of such shops without the Collector's permission—Opium Act (I of 1878), s. 4—Rules made under Opium Act, ss. 43, 44, 45 and 52—Right to recover advances made for an illegal purpose subsequently carried out.*] The plaintiff who held the farm of the right of retail opium at certain shops in a district, and whose lease contained a clause prohibiting subletting without the Collector's permission, entered into an agreement with the defendant to sublet to him, on certain conditions, the management of certain shops in the district for one year without the Collector's permission. After the expiration of the year, the plaintiff brought a suit against the defendant to recover the balance due to him under the agreement, and obtained a decree:—*Held*, reversing the decree, that the agreement not being permitted by the rules framed under the Opium Act (I of 1878) was forbidden by s. 4 of the Act, and was void as having in view an object forbidden by law:—*Held*, further, that the plaintiff could not recover the price of the opium supplied to the defendant, inasmuch as advances made for an illegal purpose, subsequently carried out, cannot be recovered. RAGHUNATH LALMAN *v.* NATHU HIRJI BHATE.

[19 Bom. 626

3.—s. 23.—*Condition against sub-contract—Sub-contract made notwithstanding condition—Suit by sub-contractor—Illegality of sub-contract—Damages—Compensation for work done.*] Defendant contracted with the Executive Engineer of the Public Works Department to supply materials for the construction of a public road. One of the conditions of the contract was that no work was to be underlet, or let by task work, by the contractor without the express permission, in writing, of the Executive Engineer or his duly authorised agent. Subsequently the defendant, without obtaining the requisite permission, entered into an oral agreement with the plaintiff, under which the plaintiff was to do the contract work and the defendant to pay him all moneys received from the Executive Engineer under the contract, after deducting ten per cent. as the defendant's profit. It did not appear that the plaintiff knew of the condition against underletting contained in the contract. The plaintiff sued the defendant for the balance of money due to him under the oral agreement. The first Court found that the plaintiff had executed the whole of the contract work: and that the defendant had received from the Executive

CONTRACT ACT (IX OF 1872)—*contd.*

(I) ILLEGAL CONTRACTS—*continued.*

(*a*) GENERALLY—*concluded.*

Engineer a total sum of Rs. 2,766-11-11, and of this had paid to the plaintiff Rs. 2,334-13-6, leaving a sum of Rs. 431-14-5 still in his hands. It ordered the defendant to pay this sum to the plaintiff less 10 per cent. of the whole sum of Rs. 2,766-11-11, and passed a decree accordingly for Rs. 155-3-8. On appeal, the Judge varied the decree by awarding to the plaintiff the whole sum of Rs. 431-14-5. He found that it had been agreed that the defendant should retain 10 per cent., but *held* that the agreement to assign or sublet the contract was contrary to public policy, and bad under s. 23 of the Contract Act (IX of 1872). On appeal to the High Court:—*Held* (reversing the decree of the Judge and restoring that of the first Court) that as it did not appear that the plaintiff knew of the condition in the contract, and as the objection of illegality was not taken by the defendant, the plaintiff was not precluded from enforcing against the defendant his own contract. Even if, however, the plaintiff could not enforce the contract, he would, under the circumstances, be entitled to receive from the defendant compensation for the work and labour of which the defendant had received the benefit. The only question was how the work done should be valued. There was no direct test of its market value. The best available test was the amount which the plaintiff, at the time when he entered into the agreement, accepted as sufficient, namely, the amount to be paid by the Executive Engineer less 10 per cent. The High Court therefore restored the decree of the Subordinate Judge. GANGADHAR RAGHUNATH JOSHI *v.* DAMODAR MOHANLAL.

[21 Bom. 522

4.—s. 23.—*Unlawful agreement—Promissory note given in fraud of insolvency law—Illegal consideration.*] In a suit on a promissory note it appeared that it had been given by the defendant to the plaintiff in consideration of his withdrawing his threatened opposition to the discharge of an insolvent and consenting to an arrangement among the general body of creditors, who were not, though the insolvent was, aware of this transaction whereby the plaintiff was to obtain a special advantage:—*Held*, that the contract was unlawful, and the suit could not be maintained. KRISHNAPPA CHETTI *v.* ADIMULA MUDALI.

[20 Mad. 84

(*b*) AGAINST PUBLIC POLICY.

5.—s. 23.—*Agreement to procure marriage—Marriage brokage contract—Hindu law.*] An agreement to assist a Hindu, for reward, in procuring a wife is void as being contrary to public policy. VAITHYANATHAM *v.* GANGARAZU.

[17 Mad. 9

6.—s. 23.—*Champerty—Speculative purchase—Agreement not opposed to public policy.*] In a suit for land worth Rs. 2,300, the plaintiff claimed under a conveyance executed to him by defend-

ant No. 1 shortly before suit in consideration of Rs. 250. The property had previously belonged to the father, since deceased, of the first defendant's wife and her sister, defendant No. 2. Shortly after the father's death, a suit for maintenance was brought by his sister-in-law against his widow and two daughters, in which the then defendants alleged that the property now in question had been given by him to the wife of the plaintiff's vendor, and the Court recorded a finding that the gift was valid:—*Held* that the plaintiff's purchase, which was found by the District Judge to be, though not a champertous transaction, one of a very speculative character, was not void as being contrary to public policy. *Gopal Ramchandra* v. *Gangaram Anandishet*, I. L. R. 14 Bom. 72, followed. RAMANUJA AYYANGAR *v.* NARAYANA AYYANGAR.

[18 Mad. 374

7.—s. 23.—*Suit on ekrar executed by priest of Hindu idol—Consideration—Right to succeed to office of priest.*] In a suit on an *ekrar* executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the *charao* (offerings to the idol), and recoverable from the defendant's successors in office:—*Held*, there having been at the date of the *ekrar* a *bonâ fide* dispute as to the right to suceed to the office of priest, there was consideration for the contract, and the contract in the circumstances of the present case was not opposed to public policy. *Miles* v. *New Zealand Alford Estate Co.*, L. R. 32 Ch. D. 266, referred to; *Parson* v. *Thompson*, 1 H. Bl. 322; *Waldo* v. *Martin*, 4 B. & C. 819; *Juggurnath Roy Chowdhry* v. *Kishen Pershad Surma*, 7 W. R. 266; *Durga Bibi* v. *Chanchal Ram*, I. L. R. 4 All. 84; *Narasimma Thatha Acharya* v. *Anantha Bhatta*, I. L. R. 4 Mad. 39; *Kuppa Gurukal* v. *Dorâsami Gurukal*, I. L. R. 6 Mad. 76; *Vurmah Valia* v. *Ravi Vurma Kunhi Kutty*, I. L. R. 1 Mad. 235, distinguished; *Mancharam* v. *Pranshankar*, I. L. R. 6 Bom. 298; and *Sitarambhat* v. *Sitaram Ganesh*, 6 Bom. H. C. 250, referred to. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA.

[23 Calc. 645

(*c*) COMPOUNDING CRIMINAL OFFENCE.

8.—s. 23.—*Consideration in part illegal—Stifling a prosecution.*] The plaintiff, claiming to be entitled together with two of the defendants to the office of *archaka* of a temple, sued in 1889 for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved:—*Held*, that the agreement was void although the withdrawal of the criminal proceedings formed part only of the consideration for it. SRIRANGACHARIAR *v.* RAMASAMI AYYANGAR.

[18 Mad. 189

See BENGAL TENANCY ACT, s. 29.

[24 Calc. 895

1.—s. 25.—*Consideration—Agreement to compensate for services rendered.*] Cases where a person without the knowledge of the promisor or otherwise than at his request does the latter some service, and the promisor undertakes to compensate him for it, are covered by s. 25 of the Contract Act (IX of 1872); in them the promise does not need a consideration to support it. SINDHA SHRI GANPATSINGJI HIMATSINGJI *v.* ABRAHAM.

[20 Bom. 755

2.—s. 25, cl. (3).—*Power of Collector as Agent to Court of Wards—Promise to pay a time-barred debt—Madras Regulation V of* 1804, *s.* 17.] A Collector has no authority to bind a ward of the Court of Wards by a promise under the Contract Act, s. 25, cl. 3, to pay a debt which is barred by limitation. SURYANARAYANA *v.* NARENDRA THATRAZ.

[19 Mad. 255

3.—s. 25 and s. 70.—*Consideration for agreement—Agreement to put estate under management of Court of Wards.*] *H D* and *S D*, two brothers, constituted a joint Hindu family owning considerable landed property. *H D* having incurred heavy personal debts, the two brothers in 1879 united in applying to have their property taken over by the Court of Wards. This was done; and, on the 17th of June, 1889, while such property was still under the management of the Court of Wards, the two brothers entered into an agreement whereby *H D* remained as manager of the property with an allowance of Rs. 12,000 per annum for his support, but ceded to his brother absolutely and unconditionally all his proprietary interest in the family property, and all power to make the family property liable in any way for the payment of his debts. On the 6th of October, 1889, the Court of Wards released the property freed from the liabilities imposed upon it by *H D*. In 1891 one *B D* obtained in the Court of the Subordinate Judge at Agra a money-decree against *H D*. *H D* died in the following year, and, subsequently to his death, *B D* sought to execute his decree against *S D* as representative of *H D* by attachment of property in the hands of *S D*. *S D* objected to the attachment, and his objection was allowed. *B D* appealed, and on this appeal it was *held* that, having regard to the agreement of the 17th June, 1889, above referred to, the property in question could not be attached as the property of *H D*. The said agreement was not bad for want of consideration; the consideration being that at the request of his brother, which must be presumed from the circumstances of the case, *S D* had agreed to place his interest in the property under the management of the Court of Wards, and had also foregone, during the ten years that estate was under the management of the Court of Wards, the greater part of his interest in the profits of the estate, and had refrained on cessation of the Court of Ward's management from suing his brother for

CONTRACT ACT (IX OF 1872)—*contd.*

an account; and even if this were not so, the agreement would be good either under s. 25, cl. (2) or under s. 70 of Act IX of 1872. BITHAL DAS *v.* SHANKAR DAT DUBE.

[17 All. 264

——, s. 30.

See CASES UNDER CONTRACT—WAGERING CONTRACTS.

——, s. 38.

See DEBTOR AND CREDITOR.

[20 Mad. 461

——, s. 39.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[18 Mad. 63

——, s. 39.—*Mortgage—Part breach of contract by mortgagee—Rescission of contract—Acquiescence—Suit by mortgagee for interest due under the mortgage as regards the part fulfilled.*] *A* mortgaged certain land to *B* for Rs. 800. Under the terms of the mortgage-deed *B* was to pay Rs. 500 of the advance to *C* in discharge of a previous mortgage executed by *A* in favour of *C*. Of the balance of Rs. 300, *B* was to retain Rs. 200 in payment of a previous debt of *A* due to him, and the balance of Rs. 100 was to be paid to *A*. *B* paid the said Rs. 100, retained the Rs. 200, but neglected to pay the said Rs. 500 to *C*, who sued *A* and recovered the debt by attachment and sale of *A's* moveable property. After eight years from the date of the mortgage, *B* brought a suit to recover the interest due under the mortgage on Rs. 300 only:—*Held* that, under s. 39 of the Contract Act, *A* was entitled to cancel the contract of mortgage owing to *B's* conduct, but that he was bound to give up the benefit he had received, *viz.*, Rs. 300, and pay interest thereon up to the date of cancellation. *B* was not entitled to treat the original mortgage as a mortgage in force with all its stipulations for Rs. 300 instead of 800, and on that view to sue for interest alone. SUBBA RAU *v.* DEVU SHETTI.

[18 Mad. 126

——, ss. 42, 43 and 44.

See DEBTOR AND CREDITOR.

[20 Mad. 461

——, s. 45.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[17 Mad. 108

See DEBTOR AND CREDITOR.

[20 Mad. 461

See PARTIES—PARTIES TO SUITS—PARTNERSHIPS, SUITS CONCERNING.

[21 Bom. 412

——, s. 49.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[24 Calc. 8

[L. R. 23 I. A. 119

CONTRACT ACT (IX OF 1872)—*contd.*

——, s. 51.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[19 Bom. 546

——, s. 63.—*Agreement extending time for performance of contract—Consideration.*] An agreement, extending the time for the performance of a contract falling under s. 63 of the Contract Act, does not require consideration to support it. DAVIS *v.* CUNDASAMI MUDALI.

[19 Mad. 398

——, s. 68.

See MINOR—LIABILITY ON CONTRACTS.

[21 Calc. 872

——, s. 69.

See VOLUNTARY PAYMENT.

[22 Calc. 28

——, s. 70.

See s. 25.

[17 All. 264

See VOLUNTARY PAYMENT.

[22 Calc. 28

——, s. 70.—*Repairs by Government to a tank in which zemindar is interested—Suit against zemindars for share of cost.*] The Government repaired a certain tank from which were irrigated lands in the zemindari of the defendants, and also *raiyatwari* villages held under Government which had been severed from the zemindari. It was found that the defendants knew that the repairs, which were necessary for the preservation of the tank, were being carried out, and did not wish to execute them themselves except as contractors, and that they had enjoyed the benefit of the work done, and further that Government had carried out the repairs not intending to do them gratuitously for the defendants. It was not found that there was any request, either express or implied, on the part of the defendants to the Government to execute the repairs. In a suit by the Secretary of State to recover from the defendants their share of the cost incurred:—*Held*, that the plaintiff was entitled under the Contract Act, s. 70, to recover part of the cost incurred, estimated with reference to the irrigable area of the villages owned by the plaintiff and defendants, respectively. DAMODARA MUDALIAR *v.* SECRETARY OF STATE FOR INDIA.

[18 Mad. 88

——, s. 73.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[18 All. 240

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[20 Mad. 481

CONTRACT ACT (IX OF 1872)—*contd.*

——, s. 74.

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

[22 Calc. 143
[18 Mad. 175

——, s. 74.—*Penalty—Suit by a joint proprietor for arrears of rent—Bengal Tenancy Act (VIII of 1885), s. 29 (b)—Kabuliat executed prior to—Covenant, for a higher rate—Enhancement of rent—Bengal Rent Act (VIII of 1869), s. 5.*] In a *kabuliat* executed in 1881, it was stipulated that, upon the expiry of the term of seven years fixed therein, a fresh lease should be executed; that should the defendant cultivate the lands without executing a fresh *kabuliat*, he would pay rent at the rate of Rs. 4 a *bigha* (a rate much higher than that fixed for the term). No fresh *kabuliat* was executed on expiry of the term, and the plaintiff, a part proprietor, collecting rent separately, brought this suit for arrears of rent at the new rate of Rs. 4. The defendant objected, *inter alia*, that the plaintiff being a part proprietor was not entitled to sue for enhanced rent, and that the stipulation for the higher rate was a mere threat, and not intended to be carried out. The first Court gave a decree at an enhanced rate, or an addition of two annas in the rupee, in terms of s. 29 (*b*) of the Bengal Tenancy Act. On appeal, the Subordinate Judge dismissed the whole suit, on the ground that the suit being one for enhanced rent, and the plaintiff a part proprietor, the suit did not lie:—*Held*, that the *kabuliat* having been executed before the Bengal Tenancy Act was passed, the present case did not come within the operation of that Act, and the plaintiff, although a part proprietor, could bring this suit. *Ram Chunder Chackrabutty* v. *Giridhur Dutt*, I. L. R. 19 Calc. 755, followed:—*Held* by PRINSEP and GHOSE, JJ. (RAMPINI, J., dissenting)—That the additional rent was intended to be enforceable only on default to execute a fresh *kabuliat*, and the so-called agreement to pay at the enhanced rate of Rs. 4 was in the nature of a penalty:—*Held* by RAMPINI, J.—The plea that the rate of Rs. 4 was a penalty was not taken by the defendant in his written statement, and, in any case, the stipulation did not come within the purview of s. 74 of the Indian Contract Act, and the suit was not for compensation for breach of contract, but for rent at a rate which the defendant has agreed to pay from a certain time:—*Held*, also, that s. 29 (*d*) of the Bengal Tenancy Act, has no retrospective effect, and does not apply to the present *kabuliat*, which was executed before the passing of that Act. That s. 5 of Bengal Act (VIII of 1869) did not debar an agreement by an occupancy ryot to pay whatever rate he pleased. *Banke Behari* v. *Sundar Lal*, I. L. R. '15 All. 232, referred to. TEJENDRO NARAIN SINGH *v.* BAKAI SINGH.

[22 Calc. 658

——, s. 94.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[24 Calc. 8
[L. R. 23 I. A. 119

CONTRACT ACT (IX OF 1872)—*concld.*

——, s. 107.

See CONTRACT—BREACH OF CONTRACT.

[24 Calc. 124, 177
[19 All. 535

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

[24 Calc. 124, 177
[19 All. 535

——, s. 128.

See SURETY—LIABILITY OF SURETY.

[19 Bom. 697

——, s. 130.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

[19 Mad. 140

See MINOR—BOMBAY MINORS ACT (XX OF 1864).

[19 Bom. 245

——, ss. 151 and 152.

See RAILWAY COMPANY.

[17 Mad. 445

——, s. 161.

See RAILWAY COMPANY.

[17 Mad. 445

——, s. 171.

See BANKERS.

[19 Mad. 234

——, s. 202.

See PRINCIPAL AND AGENT—COMMISSION AGENTS.

[20 Mad. 97

——, s. 231.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[24 Calc. 8
[L. R. 23 I. A. 119

——, s. 265.

See RES JUDICATA—MATTERS IN ISSUE.

[22 Calc. 692

See VALUATION OF SUIT—SUITS.

[22 Calc. 692

CONTRADICTORY STATEMENTS.

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[18 Bom. 377

CONTRIBUTION.

——, Right to.

See PRE-EMPTION—RIGHT TO PRE-EMPTION.

[21 Calc. 496

CONTRIBUTION, SUIT FOR.

Col.
1. Payment of Joint Debt by one Debtor... 257
2. Joint Wrong-doers ... 258

See HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING ESTATE OR PERSONALTY.

[22 Calc. 974

See LIMITATION ACT, ART. 120.

[20 Mad. 23

See MULTIFARIOUSNESS.

[24 Calc. 540

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS.

[18 Mad. 134

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRIBUTION, SUITS FOR.

[23 Calc. 189

See TRANSFER OF PROPERTY ACT, S. 82.

[19 All. 545

(1) PAYMENT OF JOINT DEBT BY ONE DEBTOR.

1.—*Sale of property subject to mortgage in execution of money-decrees against mortgagors—Subsequent suit by mortgagee to recover his mortgage-debt by sale of part of mortgaged property only—Payment of mortgage-debt by holder of part of mortgaged property—Right on such payment to sue for contribution from other holders of the mortgaged property.*] The owner of a portion of property comprised in a mortgage, who, in order to save his share from sale, has satisfied a decree obtained by the mortgagee on the mortgage against him, can exact contribution from the owner of another portion of the mortgaged property who was not a defendant in the mortgagee's suit. *Jagat Narain* v. *Qutub Husain*, I. L. R. 2 All. 807, followed. CHAGANDAS MAGANDAS *v.* GANSING.

[20 Bom. 615

2.—*Suit for contribution against joint judgment-debtor—Right of suit—Remedy by separate suit and not in execution of decree—Civil Procedure Code, s.* 244.] Section 244 of the Code of Civil Procedure does not apply to a suit brought by one of two joint judgment-debtors who has been compelled to satisfy the decree in full against the other joint judgment-debtor for contribution. RAM SARAN PANDE *v.* JANKI PANDE.

[18 All. 106

3.—*Joint decree for costs against defendants having separate defences—Right of suit.*] In a suit against one defendant for possession of certain property, which was claimed as his by the original defendant, certain third persons got themselves added to the array of parties as defendants and put in a defence in opposition to and exclusive of that of the first defendants. The plaintiff in that suit obtained a decree, the claims of both sets of defendants being found to be unsupported, and the decree gave costs jointly against all the defendants. The decree having been executed for costs against the first defendant, he sued the other defendants for contribution:—*Held*, that the suit would not lie. *Kristo Chunder Chatterjee* v. *Wise*, 14 W. R. 70; *Sreeputty Roy* v. *Loharam Roy*, B. L. R. Sup. Vol. 687; 7 W. R. 384; *Abdul WahidKhan* v. *Shaluka Bibi*, I. L. R. 21 Calc. 496; and *Suput Singh* v. *Imrit Tewari*, I. L. R. 5 Calc. 720, referred to. FAKIRE *v.* TASADDUQ HUSAIN.

[19 All. 462

(2) JOINT WRONG-DOERS.

4.—*Joint tort-feasor—Adjustment of a loss arising from an illegal contract.*] A deed of partition between *A* and *B*, members of an undivided Hindu family, provided that *A*, who took over all the debts due to the family, should bear the loss, if any, incurred in an appeal then pending in a suit brought by the family on a bond. The bond was held to evidence a fraudulent transaction, and the appeal was dismissed with costs. The decree for costs was executed against *B* and satisfied by him: he now sued the son of *A* (deceased) to recover the amount paid by him:—*Held*, that the plaintiff was entitled to recover, the claim not being barred by the rule against contribution between joint tort-feasors. LAKSHMANA AYYAN *v.* RANGASAMI AYYAN.

[17 Mad. 78

5.—*Decree for costs—Evidence to prove collusion—Proceedings in former case not between same parties—Admissibility in evidence of finding in former case.*] *S* granted to *G* and *A* a *patni* of a certain share in a zemindari, and thereupon *P* brought a suit against *G*, *S* and *A* for specific performance of an agreement to grant to him (*P*) a *patni* of the same share. That suit was decreed with costs, the whole of which were realized from *G*. In a suit for contribution brought by *G* against *S* and *A*, the lower Appellate Court found that *G*, *S* and *A* had conspired in setting up a false defence in the former suit in order to defeat *P's* claim:—*Held*, on second appeal, that, assuming such collusion were proved, the suit for contribution was not maintainable, *G*, *S* and *A* being joint wrong-doers. *Vayangara Vadaka Vittil Manja* v. *Pariyangot Padingara Kuruppath Kadugochen Nayar*, I. L. R. 7 Mad. 89, followed; *Brojendro Kumar Roy Chowdhry* v. *Ras Behari Roy Chowdhry*, I. L. R. 13 Calc. 300, distinguished. The only evidence on which the lower Appellate Court had acted as establishing such collusion was the finding of the Court in the former suit (gathered from the grounds of appeal in that suit):—*Held*, that that finding was inadmissible in evidence, as laid down in *Surendar Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdry*, I. L. R. 13 Calc. 352, being the finding in a case in which *G*, *S* and *A* were all co-defendants, and a third party the plaintiff; and the case was remanded for the determination of the question whether *G*, *S* and *A* were wrong-doers, and were

CONTRIBUTION, SUIT FOR—*concluded.*

(2) JOINT WRONG-DOERS—*concluded.*

as such held liable for the costs of the former suit. GOBIND CHUNDER NUNDY *v.* SRIGOBIND CHOWDHRY.

[24 Calc. 330

CONTRIBUTORY.

——, Liability of.

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

[18 Bom. 152

CONTRIBUTORIES.

——, List of.

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

[20 Bom. 654

See COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS.

[20 Bom. 654

CONVERSION.

See HUNDI.

[18 Bom. 576

CONVERTS.

See SALSETTE LAW APPLICABLE IN.

[19 Bom. 680

See SUCCESSION ACT, S. 331.

[19 Bom. 783

1.—*Suni Borah Mahomedans—Conversion, Effect of—Hindu converts to Mahomedanism, Custom and usage of—Inheritance among such converts—Native Christians—Law applied to Native Christians prior to Indian Succession Act (X of 1865)—Burden of proof.*] The Suni Borah Mahomedan community of the Dhandhuka Taluka in Gujarat are governed by the Hindu law in matters of succession and inheritance:—*Held*, therefore, that in this community a widow is entitled to succeed to her husband's estate to the exclusion of a daughter or a step-daughter. As to the law governing Hindu converts to Mahomedanism, the following principles may now be regarded as settled:—(1) Mahomedan law generally governs converts to that faith from Hinduism; but (2) a well-established custom of such converts following the Hindu law of inheritance would override the general presumption. (3) This custom should be confined strictly to cases of succession and inheritance. (4) If any particular custom of succession be alleged which is at variance with the general law applicable to these communities, the burden of proof lies on the party alleging such special custom. If evidence is given as to the general prevalence of Hindu rules of succession in a Mahomedan community in preference to the rules of Mahomedan law, the burden of proof is discharged, and it then rests with the party, disputing the particular Hindu usage in question, to show that it is excluded from the sphere of the proved general usage of the community. Among Native Christians, certain classes strictly retain

CONVERTS—*concluded.*

the old Hindu usages, others retain these usages in a modified form, and others again wholly abandon them. Before the Indian Succession Act (X of 1865), the Christian convert could elect to attach himself to any one of these particular classes, and he would be governed by the usage of the class to which he so attached himself. *Abraham* v. *Abraham*, 9 Moo. I. A. 195. These same principles are applied to the case of Hindu converts to Mahomedanism, such as Khojas and Cutchi Memons. BAI BAIJI *v.* BAI SANTOK.

[20 Bom. 53

2.—*Molesalam Girasias—Hindu converts to Mahomedanism—Retention of Hindu law and usages—Hindu law—Inheritance.*] The Hindu law of inheritance and succession applies to *Molesalam Girasias* who were originally Rajput Hindus, but were subsequently converted to Mahomedanism. FATESANGJI JASVATSANGJI *v.* KUVAR HARISANGJI FATESANGJI.

[20 Bom. 181

CONVEYANCE.

See STAMP ACT, SCH. I, ART. 21.

[20 Bom. 432
[23 Calc. 283
[20 Mad. 27

CONVICTION.

——, Previous.

See CRIMINAL PROCEDURE CODE, S. 403.

[23 Calc. 174

——, Propriety or otherwise of.

See PLEADER—REMOVAL, SUSPENSION OR DISMISSAL.

[18 All. 174

——, Reasons for.

See CRIMINAL PROCEDURE CODE, S. 263.

[18 Bom. 97

COPY OF DECREE OR JUDGMENT, TIME NECESSARY FOR OBTAINING.

See LIMITATION ACT, S. 12.

[18 Mad. 374
[19 All. 342
[20 Mad. 476

See MADRAS RENT RECOVERY ACT, S. 69.

[20 Mad. 476

COPY OF DECREE, JUDGMENT, OR ORDER, NECESSITY FOR.

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION.

[17 All. 213

COPYRIGHT.

—Infringement of copyright — Translations — Jurisdiction—Cause of action—Statute 5 and 6 Vict. cap. 45—Act XX of 1847, s. 8—Order for

COPYRIGHT—*concluded.*

books sent from Bombay to Delhi—Registration of copyright—Notice of disputed proprietorship.] The plaintiffs were publishers in London. The defendant carried on a printing and publishing business at Delhi. Between the years 1869 and 1891, the defendant translated certain English works (*e.g.* Todhunter's Mensuration, Barnard Smith's Algebra, &c.) into the Urdu language for the use of native students, and sold and distributed copies of such translations in various parts of India. The plaintiffs alleged that they were the proprietors of the copyright in the said books, and they sued in Bombay for a declaration of their ownership, and that the said books printed and sold by the defendant were an infringement of the said copyright, and for an injunction, &c. It appeared that in June, 1894, the plaintiffs' agent, who was then in India, instructed the Bombay firm of *S* to order copies of the said translations from the defendant. A letter was accordingly sent by *S* to the defendant at Delhi requesting him to send the books to Bombay by value-payable post, which the defendant did, and he received payment for them from the Post Office at Delhi. The defendant pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, and he denied that he had infringed the plaintiffs' copyright:—*Held*, that no part of the plaintiffs' cause of action arose in Bombay, and that the High Court of Bombay had no jurisdiction. The act of *S* in paying for and receiving the goods formed no part of the defendant's offence, which was completed when he posted the books at Delhi. The English Copyright Act (Statute 5 and 6 Vict. cap. 45) extends to all parts of India. Having regard to s. 15 of that Act, it is clear that a person who infringes copyright must be sued, if he offends in India, not only within the limits of that country, but also in that part of India in which the offence has been committed. See also s. 13 of the Indian Act XX of 1847:—*Held*, also, that translations are not copies, and that the defendant by translating the books had not infringed the plaintiffs' copyright. The plaintiffs had registered themselves as the proprietors of the copyright of the books in question both in London and in India. The defendant had not given notice of his intention to dispute the plaintiffs' copyright as required by s. 8 of Act XX of 1847:—*Held*, that the plaintiffs' copyright in the book had been established. MACMILLAN *v.* SHAMSUL ULAMA M. ZAKA.

[19 Bom. 557

CORPORATE BODY, INTERFERENCE OF COURT WITH.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 42.

[19 Bom. 212

CORPORATION, PRINCIPAL OFFICER OF.

See PLAINT—VERIFICATION AND SIGNATURE.

[21 Calc. 60
[L. R. 20 I. A. 139
[16 All. 420

CORPORATION, PRINCIPAL OFFICER OF—*concluded.*

See WRITTEN STATEMENT.

[22 Calc. 268

CO-SHARERS. *Col.*

1. General Rights in Joint Property ... 263
2. Enjoyment of Joint Property ... 263
3. Suits by Co-sharers with respect to the Joint Property ... 264
   (*a*) Ejectment ... 264
   (*b*) Rent ... 264
   (*c*) Miscellaneous Suits ... 265

See BENGAL TENANCY ACT, s. 56.

[24 Calc. 169

See DECREE—FORM OF DECREE—POSSESSION.

[18 Bom. 505

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

[18 Bom. 141

See PARTITION—RIGHT TO PARTITION.

[21 Bom. 458

See CASES UNDER PRE-EMPTION.

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[18 All. 325

See RIGHT OF SUIT—CO-SHARERS.

[18 Bom. 611

——, Consent of.

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION OF MEMBERS—OTHER MEMBERS.

[16 All. 369

——Exclusive possession by some of several.

See LIMITATION ACT, ART. 120.

[23 Calc. 799

——, Mortgage of undivided shares by one of several.

See COSTS—SPECIAL CASES—PARTITION.

[21 Calc. 904

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[18 Mad. 316

——, Purchase by one of several landlords.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[21 Calc. 869
[24 Calc. 143

——, Sale by one of several.

See DECREE—FORM OF DECREE—POSSESSION

[19 Bom. 86

CO-SHARERS—*continued.*

See HINDU LAW—PARTITION—PROPERTY LIABLE TO PARTITION.

[18 Mad. 73

(1) GENERAL RIGHTS IN JOINT PROPERTY.

1.—*Bengal Tenancy Act (VIII of* 1885), *s.* 174—*Payment of decretal amount by one co-sharer to set aside sale for arrears of rent, Effect of—Lien or charge on property.*] Where the plaintiffs and defendants were co-tenants of certain *jotes* which were sold by auction in execution of a decree for rent, and the plaintiffs, by paying the decretal amount and auction-purchaser's fees under s. 174, Bengal Tenancy Act, had the sale set aside:—*Held*, that the plaintiffs did not, by such payment, acquire a charge on the shares of their defaulting co-tenants. *Kinu Ram Das* v. *Mozaffer Hosain Shaha*, I. L. R. 14 Calc. 809, followed. GOPI NATH BAGDI *v.* ISHUR CHUNDRA BAGDI.

[22 Calc. 800

2.—*Right of one co-sharer to receive rent—Irregular appointment of lambardar by Collector—Right of tenant to pay his entire rent to individual co-sharer and of co-sharer to receive it—N.-W. P. Land Revenue Act (XIX of* 1873), *s.* 65—*Custom.*] *Held*, that where the Collector of a district appointed by order one of two co-sharers in a *mehal* to be *lambardar* and directed the tenants to pay rent to her, no *lambardar* having been appointed at the settlement of the *mehal*, orat any time by agreement between the co-sharers, such appointment by the Collector did not empower the *lambardar*, so appointed, to collect the rents of the tenants:—*Held*, also, that, in the absence of either an arrangement recorded at the settlement under s. 65 of Act XIX of 1873 or a local custom or special contract, one of several co-sharers in a *mehal* could not be taken to have a general right to receive the whole of the rent payable by a tenant in the *mehal*. PARBATI *v.* NIADAR.

[18 All. 129

(2) ENJOYMENT OF JOINT PROPERTY.

3.—*Co-parcener's right to joint possession of the whole or any part of the joint estate without necessity for partition—Hindu law—Joint family.*] A co-parcener in the undivided property of a joint Hindu family is entitled to claim joint possession of a portion of the property, and need not sue for a partition. Where it appeared that the parties to the suit each held parcels of the undivided family property in exclusive possession, and the plaintiff asked to be put in joint possession with the defendant:—*Held*, that he was entitled to a decree for joint possession. A co-parcener is entitled to a joint benefit in every part of the undivided estate. RAMCHANDRA KASHI PATKAR *v.* DAMODHAR TRIMBAK PATKAR.

[20 Bom. 467

4.—*Party-wall—Erection on the wall by one co-sharer—Right of other co-sharers to have building removed—Right of suit.*] One of two tenants in common of a party-wall raised the height of the wall with a view to building a superstructure on his own tenement. The other tenant in common, who had not consented to the alteration in the wall, but had suffered no inconvenience therefrom, now sued to enforce the removal of the newly erected portion:—*Held*, that the plaintiff was entitled to the relief sought. KANAKAYYA *v.* NARASIMHULU.

[19 Mad. 38

5.—*Rights of co-sharers as to erection of buildings on joint land—Injunction.*] One of several joint owners of land is not entitled to erect a building upon the joint property without the consent of the other joint owners, notwithstanding that the erection of such building may cause no direct loss to the other joint owners. *Shadi* v. *Anup Singh*, I. L. R. 12 All. 436, referred to. NAJJU KHAN *v.* IMTIAZ-UD-DIN.

[18 All. 115

6.—*Suit by one co-parcener for possession of a building erected by a stranger on the joint property and purchased by the other co-parceners—Trespassers.*] Where a stranger to the property built upon certain land jointly held by several co-parceners, and some of the co-parceners purchased from the stranger the building so erected, it was *held* that the purchasers were, *quoad* the building in suit, trespassers, and that a suit might be maintained by the remaining co-parcener to be put into joint possession of the building; and this though it was not shown that any special damage had been suffered by the plaintiff by reason of the building. *Paras Ram* v. *Sherjit*, I. L. R. 9 All. 661; and *Najju Khan* v. *Imtiaz-ud-din*, I. L. R. 18 All. 115, referred to. MUHAMMAD ALI JAN *v.* FAIZ BAKHSH.

[18 All. 361

(3) SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY.

(*a*) EJECTMENT.

7.—*Suit by one co-sharer as manager—Parties—Failure of tenant to pay enhanced rent after notice.*] A co-sharer who is manager cannot, even with the consent of his co-sharers, maintain a suit by himself and in his own name to eject a tenant who has failed to comply with a notice calling on him to pay enhanced rent. BALKRISHNA SAKHARAM *v.* MORO KRISHNA DABHOLKAR.

[21 Bom. 154

(*b*) RENT.

8.—*Suit by a joint proprietor for arrears of rent—Kabuliat executed prior to Bengal Tenancy Act—Covenant for a higher rate—Enhancement of rent.*] In a *kabuliat* executed in 1881, it was stipulated that, upon the expiry of the term of seven years fixed therein, a fresh lease should be executed, that should the defendant cultivate the lands without executing a fresh *kabuliat*, he would pay rent at the rate of Rs. 4 a *bigha* (a rate much higher than that fixed for the term). No fresh *kabuliat* was executed on expiry of the term, and the plaintiff, a part proprietor collecting rent

CO-SHARERS—*continued.*

(3) SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*b*) RENT—*concluded.*

separately, brought this suit for arrears of rent at the new rate of Rs. 4. The defendant objected *inter alia* that the plaintiff, being a part proprietor, was not entitled to sue for enhanced rent. The first Court gave a decree at an enhanced rate. On appeal, the Subordinate Judge dismissed the whole suit, on the ground that the suit being one for enhanced rent, and the plaintiff a part proprietor, the suit did not lie:—*Held*, that the *kabuliat* having been executed before the Bengal Tenancy Act was passed, the present case did not come within the operation of that Act, and the plaintiff, although a part proprietor, could bring this suit. *Ram Chunder Chackrabutty* v. *Giridhur Dutt*, I. L. R. 19 Calc. 755, followed. TEJENDRO NARAIN SINGH *v.* BAKAI SINGH.

[22 Calc. 658

(*c*) MISCELLANEOUS SUITS.

9.—*N.-W. P. Rent Act* (*XII of* 1881), *ss.* 93 *and* 94—*Suit by a recorded co-sharer for recorded share of profits—Suit for settlement of accounts—Limitation.*] Where one collecting co-sharer in a *mehal* sued other collecting co-sharers, not being *lambardars* of the *mehal*, for a refund of profits which the plaintiff alleged the defendants to have collected over and above the shares which they were entitled to collect:—*Held* by TYRRELL and KNOX, JJ., that this was not a suit by a recorded co-sharer for a recorded share of the profits of a *mehal* within the meaning of the former portion of s. 93, cl. (*h*) of Act XII of 1881, but was a suit for a settlement of accounts within the meaning of the latter portion of the same clause; and that, such being the case, the period of limitation applicable was that prescribed by the third paragraph of s. 94 of the above-mentioned Act. *Dabee Deen* v. *Doorga Pershad*, 3 N. W. 49, referred to by TYRRELL, J. *Per* BURKITT, J., *contra*—"The suit" * * "may be considered to be a suit for profits within the meaning of the opening words of s. 93 (*h*) of the Rent Act, and cannot be considered to be a suit for 'a settlement of accounts' within the meaning of the concluding words of that clause." *Durga Prasad* v. *Dip Chand*, Weekly Notes, All. (1881), 27; *Kushalo* v. *Ram Das*, Weekly Notes, All. (1889), 171; *Dabee Deen* v. *Doorga Pershad*, 3 N. W. 49, referred to. INDO *v.* INDO.

[16 All. 28

10.—*N.-W. P. Rent Act* (*XII of* 1881), *ss.* 93 (*b*) *and* 94—*Suit for a settlement of accounts—Suit for a share in the profits of a mehal—Limitation.*] With reference to the periods of limitation prescribed by s. 94 of Act XII of 1881, a suit for a share of the profits of a *mehal* does not become a suit for a settlement of accounts, because, in order that a Court may give the plaintiff a decree, it is necessary for the Court to settle disputed items of credit and debit: but where the main object of the suit is to obtain a settlement of accounts between the

CO-SHARERS—*concluded.*

(3) SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*concluded.*

(*c*) MISCELLANEOUS SUITS—*concluded.*

plaintiff, recorded co-sharer, and the *lambardar*, or betwen such plaintiff and one or more or all of the co-sharers in the village, although the ulterior object of obtaining such statement of accounts may be that the plaintiff may obtain a decree for a share, if any, of the profits, due to him, then the suit must be regarded as a suit for a settlement of accounts to which a period of one year's limitation applies. ROHAN *v.* JWALA PRASAD.

[16 All. 333

11.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 93—*Suit by recorded co-sharer for recorded share of profits — Adverse possession — Limitation.*] The mere circumstance that a co-sharer's name is recorded in the revenue papers will not prevent a suit by him for his share of profits being barred by limitation if in fact he has received no profits for more than twelve years prior to such suit. *Maksood Ali Khan* v. *Ghazee-ood-deen*, 3 Agra, 158; and *Tulshi Singh* v. *Lachman Singh*, Weekly Notes, All. (1881), 20, followed. MUHAMMAD HUSAIN *v.* BADRI PRASAD.

[17 All. 423

COSTS.

		Col
1.	Special Cases	... 268
	Attorney and Client	... 268
	Litigation unnecessary	... 268
	Partition	... 268
	Payment into Court	... 269
	Plaintiffs	... 270
	Probate	... 270
	Respondents	... 271
	Small Cause Court Suits	... 271
	Suit or Appeal only partly decreed	272
2.	Taxation of Costs	... 273
3.	Costs out of Estate	... 274

See BENGAL TENANCY ACT, S. 61.

[21 Calc. 680

See CIVIL PROCEDURE CODE, S. 100.

[18 Bom. 59

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

[17 Mad. 168

See DIVORCE ACT, S. 35.

[19 Bom. 293

[23 Calc. 912, 916 note

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[17 All. 156

See INTEREST—MISCELLANEOUS CASES—COSTS.

[23 Calc. 357

See INTERPLEADER SUIT.

[18 Bom. 231

COSTS—*continued.*

See HUSBAND AND WIFE.

[21 Bom. 77

See MINOR—LIABILITY ON CONTRACTS.

[24 Calc. 265

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 257

See PAUPER SUIT—APPEALS.

[18 Bom. 454, 464

See PLEADER—REMUNERATION.

[21 Bom. 42

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

See PRACTICE—CIVIL CASES—SALE BY RECEIVER.

[21 Calc. 479

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[21 Calc. 566

See PRIVY COUNCIL, PRACTICE OF—COSTS.

[L. R. 24 I. A. 191

[25 Calc. 187

See RECEIVER.

[19 Bom. 660

See CASES UNDER SECURITY FOR COSTS.
See SET-OFF—CROSS-DECREES.

[16 All. 395

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION — RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE COURT, S. 622.

[18 Bom. 454

See VALUATION OF SUIT—APPEALS.

[19 Mad. 350

See WILL—CONSTRUCTION.

[19 Bom. 221, 770

——, Assessment of.

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

——, Decree for.

See CONTRIBUTION, SUIT FOR—JOINT WRONGDOERS.

[24 Calc. 330

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[18 Bom. 542

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

[23 Calc. 357

COSTS—*continued.*

—— of preparing deed.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[21 Bom. 126

See SET-OFF—GENERAL CASES.

[21 Bom. 126

——, Order as to.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[21 Bom. 279

——, Suit for.

See LIMITATION ACT, ART. 84.

[22 Calc. 943, 952 note

——, Taxation of.

See LIMITATION ACT, ART. 84.

[22 Calc. 943, 952 note

(1) SPECIAL CASES.

1.—*Attorney and client—Lien of attorney for costs—Application for costs to be paid out of money in hands of Receiver in the suit—Practice.*] The attorneys for the plaintiff claimed a lien on the amount in the hands of the Receiver of the Court to the credit of the plaintiff in a partition suit, for the costs of the suit which had been secured by the deposit with the attorneys of the title-deeds of the plaintiff's family dwelling-house which formed a portion of the property sold by the Receiver under the decree in the suit:—*Held*, on an application by the attorneys for payment to them of such costs, that the lien could not be given effect to in summary-proceedings of this nature, but should form the subject of a regular suit. Except in such a suit, it is not the practice of the Court to make any order for payment of costs between an attorney and his client. *Domun v. Emaun Ally*, I. L. R. 7 Calc. 401, followed. MAHOMMED ZOHURUDDEEN *v.* MAHOMMED NOOROODDEEN.

[21 Calc. 85

2.—*Litigation unnecessary—Defendant not to blame for litigation.*] In a suit for rent which was dismissed on proof that the defendant had deposited the rent in Court under s. 61 of the Bengal Tenancy Act, and it was found that the defendant had not been to blame for the litigation, he was held entitled to his costs. STALKARTT *v.* GURU DAS KUNDU CHOWDHRY.

[21 Calc. 680

3.—*Partition—Civil Procedure Code* (1882), *s.* 222—*Costs of partition charged under that section on shares of parties in partition suit—Mortgage by one sharer of undivided shares—Liability for costs of partition of mortgagee not party to partition suit—Application in suit by person not party to suit—Remedy by supplemental suit—Procedure.*] *K S* and *K B* were joint owners of certain properties. In 1886, *K S* mortgaged his undivided share to *S C* in consideration of a loan advanced by *S C* to him. In 1887, *K S* brought a suit, to which *S C* was not made

COSTS—*continued.*

(1) SPECIAL CASES—*continued.*

a party, against *K B* for partition, and, on 27th April, 1888, obtained a decree under which a commission of partition was issued. In the course of the suit, both *K S* and *K B* died—*K B* on 2nd September, 1888, and *K S* on 30th March, 1892—and by orders of Court their sons were put on the record in place of their respective fathers. The return to the commission of partition was made on 24th February, 1892, and, on 20th July, 1893, an order was made confirming the return, and, under s. 222 of the Civil Procedure Code, charging the costs of suit and of the commission of partition to the shares of the plaintiffs and defendants, respectively, in the suit. Meanwhile in July, 1889, *S C* brought a suit on his mortgage, and obtained a decree, dated 5th August, 1889, for an account and sale, and in that suit a final order for sale was made on 5th January, 1891, which, however, was only filed on 19th August, 1893. Under that order, the property was advertised for sale, the return to the commission of partition being set out in the abstract of title as part of the title, and the property to be sold being described as a divided moiety. In an application made both in the partition and mortgage suits, by the defendants in the partition suit, for an order for sale of a portion of their share of the property in order to pay the costs of the suit and of the partition and other debts and liabilities for which they were liable:—*Held*, that the mortgagee, having had the benefit of the partition, and having accepted and approved of it as part of his title, as shewn by the proceedings for sale, was, though not a party to the partition suit, bound by the equities attaching to the mortgaged property as incidents of the partition. He was therefore liable in respect of a proportionate share of the charge for costs of the partition created by the order of Court made in that suit under s. 222 of the Civil Procedure Code, and such proportionate share of those costs should be deducted in priority out of the proceeds of the sale of the mortgaged property. The defendants in the partition suit, however, not being parties to the mortgage suit, such an order could not be properly made at their instance, but they should enforce the charge for costs against the mortgagee by supplemental suit, and the Court stayed the sale of the property for a reasonable time to give the parties an opportunity of moving for stay of the sale in any such suit as might be instituted. KHETTERPAL SRITIRUTNO *v.* KHELAL KRISTO BHUTTACHARJEE; KALLY CHURN BHUTTACHARJEE *v.* DURGA CHURN BHUTTACHARJEE; SRISTIDHUR COUCH *v.* KALLY CHURN BHUTTACHARJEE.

[21 Calc. 904

4.—*Payment into Court—Civil Procedure Code* (1882), *s.* 379—*Suit for injunction or damages—Payment into Court by defendant to satisfy plaintiff's claim—Costs in such case—Costs—Civil Procedure Code* (1882), *s.* 220—*Discretion of Court.*] The plaintiffs sued alleging certain windows in their house to be ancient windows and complaining that a building in course of erection by the defendant would, when completed according to the building plan, obstruct the light through the said windows. In his written statement, the defendant denied that the plaintiffs' windows were ancient, and that the plaintiffs were entitled to the light and air as an easement. At the time of filing his written statement, the defendant paid into Court the sum of Rs. 200, which in his written statement he stated was more than sufficient to compensate the plaintiffs for any damages they might sustain, and which he (defendant) paid in without prejudice to his contentions, but for the sake of peace and to avoid litigation. At the hearing, the plaintiffs abandoned their claim for an injunction, but insisted that they were entitled to more than Rs. 200 as damages. The Court found that the plaintiffs' windows were ancient, but that the Rs. 200 paid into Court were sufficient damages. It therefore ordered that the defendant should pay all the plaintiffs' costs up to the date at which the Rs. 200 were paid into Court, and as to their subsequent costs that the defendant should pay three-fourths of the plaintiffs' subsequent costs, and the plaintiffs should pay to the defendant one-fourth of the defendant's subsequent costs. The Court offered to simplify its order by directing the defendant to pay all the costs of the plaintiffs up to the date of paying the Rs. 200 into Court and half the plaintiffs' taxed costs subsequent to that date. The defendant appealed, contending that, under s. 379 of the Civil Procedure Code (Act XIV of 1882), the plaintiffs should have been ordered to pay all the defendant's costs subsequent to the payment into Court:—*Held*, that the suit was not one to recover a debt or damages, and therefore s. 379 of the Civil Procedure Code did not apply. That being so, the Judge had full discretion under s. 220 of the Civil Procedure Code to apportion the costs, and the Court of Appeal would not interfere with that discretion:—*Held*, also, that in cases not being suits to recover a debt or damages where money is paid into Court, the principle underlying s. 379 of the Civil Procedure Code ought to regulate the discretion of the Court in directing the payment of costs. LUXUMON NANA PATIL *v.* MOROBA RAMCRISHNA.

[21 Bom. 502

5.—*Plaintiffs—Liability of unsuccessful plaintiff for costs unnecessarily incurred by the defendant owing to his vakil's negligence.*] The costs which a defeated plaintiff should be required to pay are those necessarily incurred by the successful party in the defence of the suit. Costs cannot be deemed necessary if by reasonable diligence on the part of the defendant or his pleader the expenditure of them could have been avoided. SEETA PATTA MAHADEVI *v.* SURYUDAMMA.

[18 Mad. 128

6.—*Probate—Costs of obtaining probate—Liability of residuary estate for costs.*] The appellant cited the respondent, who was the executor of one *T*, to bring in and prove his testator's will. The Division Court (STARLING, J.) ordered the respondent to lodge the will in Court and to take out probate, but directed that the appellant should pay half the costs of obtaining probate.

COSTS—*continued.*

(1) SPECIAL CASES—*continued.*

On appeal:—*Held* (varying the order of STARLING, J., as to costs), that the fund primarily liable to the costs of probate was the residuary estate; and part of the residuary estate being as yet undistributed, it should, in the first instance, be applied to this purpose, and after that the appellant and respondent should contribute in equal shares. DAYABHAI TAPIDAS *v.* DAMODARDAS TAPIDAS.

[21 Bom. 75

7.—*Respondents—Assignment of decree pending appeal—Assignee of decree made respondent to appeal—Adding parties on appeal—Liability of assignee for costs of hearing in lower Court.*] The Standard Oil Company and one *E* sued the defendant for damages. The lower Court found that there was no privity of contract between the company and the defendant, and dismissed the suit of the company (plaintiff No. 1) with costs, but passed a decree for *E* (plaintiff No. 2) with costs. The defendant appealed, in the first instance, making *E* the sole respondent. The company, however, gave the defendant (appellant) notice that the decree obtained by *E* had been assigned to them. Whereupon he (the appellant) obtained leave to make the company party-respondents as assignees of the decree from *E*. The company objected to be made respondents. The appeal Court reversed the decree of the lower Court and dismissed the suit, and the question arose whether the company could be made liable for the general costs of the hearing in the lower Court:—*Held*, that the company were liable only for the costs of the appeal in which they had taken an active part, but not for the general costs of hearing in the lower Court, except so far as the suit was their suit. *E* was liable for the costs throughout. The appellant (defendant) was not entitled, by bringing the company on the record against their will, to obtain an additional security for the costs already incurred in the lower Court. The assignee of a decree who is made respondent in an appeal from it, and takes no steps actively to support it, ought not to be ordered to pay costs. RAMJI MORARJI *v.* ELLIS.

[20 Bom. 167

8.—*Small Cause Court suits—Presidency Small Cause Courts Act (XV of 1882), s. 22—Presidency Small Cause Courts Act (I of 1895), s. 11—Suit brought before, but determined after, the passing of Act I of 1895—Certificate for costs—General Clauses Consolidation Act (I of 1868), s. 6.*] The plaintiff, before the passing of Act I of 1895, instituted in the High Court a suit to recover from the defendant a sum of over Rs. 2,000, which was reduced to a sum of less than Rs. 2,000 before the hearing, and therefore below the limit for suits cognizable by the Small Cause Court. At the time of its institution, Act XV of 1882 was applicable, by s. 22 of which Act a plaintiff was deprived, in a suit cognizable by the Small Cause Court, of his costs if he obtained a decree "for less than Rs. 2,000," unless the Judge who tried it certified it was a fit case to be tried in the High Court. The suit was not determined until after the passing of Act I of 1895, by s. 11 of which the deprivation of costs applied to cases in which the plaintiff obtained a decree for less than Rs. 1,000. The Judge made a decree in favour of the plaintiff, and, without certifying that the case was one fit to be brought in the High Court, he allowed the plaintiff the costs of the suit:—*Held*, on appeal, that the case was governed by s. 6 of the General Clauses Consolidation Act (I of 1868): Act I of 1895 was not applicable, and the plaintiff was not entitled to his costs of suit. The principle of *Deb Narain Dutt* v. *Narendra Krishna*, I. L. R. 16 Calc. 267, applied. ISMAIL ARIFF *v.* LESLIE.

[24 Calc. 399

9.—*Right of plaintiff recovering less than Rs. 2,000 in High Court—Presidency Small Cause Court Act (XV of 1882), s. 22—Presidency Towns Small Cause Court Act Amendment Act (I of 1895)—General Clauses Consolidation Act (I of 1868), s. 6.*] In this suit the plaintiffs recovered a total sum of Rs. 1,907 from the defendant for breach of contract. The suit was brought in 1894. It was contended for the defendant that s. 22 of the Presidency Small Cause Court Act (XV of 1882), which was in force at the date of the institution of the suit, applied to the case, and that, under that section, the plaintiffs although successful were not entitled to their costs:—*Held*, that the plaintiffs were entitled to recover costs. The power to award costs is derived entirely from Acts of the Legislature, and in making the award the Court cannot base its decision on provisions which have been repealed and are no longer effective at the time its order is passed:—*Held*, also, that s. 6 of the General Clauses Act (I of 1868) did not apply to the case. *Ismail Ariff* v. *Leslie*, I. L. R. 24 Calc. 399, not followed. YONOSUKE MITSUE *v.* OOKERDA KHETSY.

[21 Bom. 779

10.—*Suit or appeal only partly decreed—Suit for injunction or damages—Decree refusing injunction, but not giving damages—"Substantial success."*] In a suit for an injunction or damages for obstruction by the defendant of the plaintiff's light and air, the defendant paid Rs. 200 into Court. The first Court granted an injunction, but on appeal the decree was varied, and an injunction refused, but Rs. 500 damages given to the plaintiff. On the question of costs, it was argued for the defendant (appellant) that he should be given his costs of appeal, as he had succeeded in setting aside the injunction granted by the lower Court, and should also get his costs of hearing in the lower Court, as the whole contest there had been as to the right to an injunction, which in appeal had been refused. The defendant had paid Rs. 200 into Court when he filed his written statement, and would have paid more if he could have obtained any indication from the plaintiff of the amount that would satisfy him. Nothing, however, would satisfy the plaintiff but an injunction, and he had failed to get it:—*Held*, that the plaintiff should have his costs of hearing in the lower

COSTS—*continued.*

(1) SPECIAL CASES—*concluded.*

Court, and that each party should pay his costs of the appeal and of the proceedings on the rule for an injunction before the trial. The ordinary rule should be observed, and the costs should follow the event. The event in this case was that the plaintiff had proved his case against the defendant, although he had not got the precise form of relief which he wanted. If a party substantially succeeds, he is entitled to his costs. GHANASHAM NILKANT NADKARNI *v.* MOROBA RAMCHANDRA PAI.

[18 Bom. 474

(2) TAXATION OF COSTS.

11.—*Suit against Secretary of State—Dismissal of suit with costs—Remuneration of law officers—Agreement between Government and Government Solicitor—Agreement not illegal nor contrary to public policy.*] Assuming that the arrangement between the Government and its Solicitor is that the latter should receive a salary, and in addition the costs awarded to Government, this arrangement cannot affect a third party condemned in costs, and the taxing officer has no right to take such an arrangement into consideration; neither is it illegal or contrary to public policy. MUHAMMED ALIM OOLLAH SAHIB *v.* SECRETARY OF STATE FOR INDIA.

[17 Mad. 162

Affirming on appeal decision in AZIMULLA SAHEB *v.* SECRETARY OF STATE FOR INDIA.

[15 Mad. 405

12.—*Attorney and client—Trustees—Bills of costs paid by majority of trustees—Right of dissenting trustee to have bills taxed even after payment—Jurisdiction of High Court.*] In a suit relating to a charitable trust, the decree directed that the costs of all parties thereto, when taxed, should be paid out of the trust fund. Certain bills of costs were subsequently furnished to the trustees by the attorneys. Two of the trustees thought the bills reasonable, and agreed that they should be paid. The third trustee objected to the amount of the bills as exorbitant, and desired that they should be taxed. Notwithstanding his protest however, the other trustees paid the bills without taxation. He thereupon took out a summons calling upon his co-trustees and the attorney to show cause why the bills should not be taxed, and why they should not refund any sum which had been overpaid:—*Held*, that the dissenting trustee was entitled to have the bills taxed, although they had been paid, and that the High Court had jurisdiction to order taxation to be made. JIJIBHOY MUNCHERJI JIJIBHOY *v.* BYRAMJI JIJIBHOY.

[18 Bom. 189

13.—*Suit relating to charitable institution or endowment—Defendants costs as between attorney and client ordered out of the charity estate—Charges allowed and disallowed as against estate—Discretion of taxing master—Trustee.*] In a suit brought by the Advocate-General at the instance of relators for the purpose of removing the defendants from

COSTS—*concluded.*

(2) TAXATION OF COSTS—*concluded.*

the position of directors of a Mahomedan mosque, and for administration of the property of the mosque, &c., the decree ordered that the defendants should have their costs taxed as between attorney and client out of the charity funds. The attorneys of the defendants accordingly brought in their bill of costs, and in taxation it was contended that they should be allowed out of the charity funds all the sums which the taxing master certified they should pay their attorneys:—*Held*, that where the taxing master decided that certain items allowed against the defendants should not come out of the charity funds, his decision could not be disturbed. It does not follow that because a charge is proper to be allowed between an attorney and client that the client, if a trustee, should be allowed that charge out of the trust funds. ADVOCATE-GENERAL OF BOMBAY *v.* ABDUL KADUR.

[20 Bom. 301

14.—*Discretion of taxing officer—Costs of two Counsel—Insolvency proceedings—Allegations of improper conduct—Purchaser—Practice.*] A rule was obtained in certain insolvency proceedings against the purchaser of property of the insolvent to show cause why such purchase should not be set aside, and alleging improper conduct on the part of the purchaser, who was represented by two Counsel, at the hearing of the rule. On taxation of costs of the purchaser, the other parties objected to the costs of two Counsel on behalf of the purchaser being allowed:—*Held*, that having regard to the allegations made, the taxing officer exercised a right discretion in allowing the costs of two Counsel. IN THE MATTER OF BEER NURSING DUTT.

[24 Calc. 891

(3) COSTS OUT OF ESTATE.

15.—*Suit for construction of will—Construction too simple to require assistance of Court.*] In a suit for the construction of a will, where the construction was not so difficult as to have required the assistance of the Court, it was *held* to be not a case where the estate should bear the costs. The suit was therefore dismissed with costs. NARAYANI DASI *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[21 Calc. 683

COUNSEL.

——, Costs of second.

See COSTS—TAXATION OF COSTS.

[24 Calc. 891

——, Privilege of.

See DEFAMATION.

[19 Bom. 340

——, Receipt for fees of.

See STAMP ACT, SCH. II, ART. 15.

[16 All. 132

"COURT."

——, Meaning of.

See COMPANIES ACT, S. 130.

[17 All. 252

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[21 Bom. 279

COURT OF WARDS.

——, Agent of.

See ACT XX OF 1863, S. 5.

[19 Mad. 285

See COLLECTOR.

[19 Mad. 255

See CONTRACT ACT, S. 25.

[19 Mad. 255

——, Manager of.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[23 Calc. 934
[24 Calc. 853
[L. R. 24 I. A. 107

COURT-FEE.

——, Deficiency in.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[19 All. 165

See COURT-FEES ACT, S. 10.

[19 All. 240

See DECREE—FORM OF DECREE—GENERAL CASES.

[18 Mad. 415

——, Non-payment of.

See LIMITATION ACT, S. 4.

[24 Calc. 889

——, Realization of, by Government.

See PAUPER SUIT—SUITS.

[18 All. 419

COURT-FEES ACT (VII OF 1870).

See CASES UNDER VALUATION OF SUIT.

——, S. 5.—*Objection as to amount of Court-fee on petition of appeal—Decision of taxing officer—Appellate Court, Power of.*] An objection taken on behalf of respondents at the hearing of an appeal as to the amount of the Court-fee stamp affixed to the petition of appeal to the High Court, cannot be entertained, the decision of the officer on that point being final unless referred to the Chief Justice. RANGA PAI *v.* BABA.

[20 Mad. 398

——, S. 6.

See LIMITATION ACT, S. 4.

[20 Mad. 319

COURT-FEES ACT (VII OF 1870)—*continued.*

——, S. 10, cl. ii.—*Suit insufficiently valued—Order for payment of additional Court-fees—Power of Court to enlarge time for payment.*] *Held*, that it is competent to a Court which has made an order under s. 10, cl. ii, of Act VII of 1870, for the payment of an additional Court-fee to enlarge, either before or after its expiration, the time limited for the payment of such additional fee. *Badri Narain* v. *Sheo Koer*, I. L. R. 17 Calc. 512; L. R. 17 I. A. 1; and *Bhugwandas Bagla* v. *Abu Ahmad*, I. L. R. 16 Bom. 263, referred to. CHUNNI LAL *v.* AJUDHIA PRASAD.

[19 All. 240

——, S. 11.—*Suit for possession and mesne profits—Code of Civil Procedure* (1882), *s.* 212—*Assessment of mesne profits—Dismissal of suit—Application for execution of decree.*] Where, upon the application of the decree-holder, the Court executing the decree has assessed the amount of mesne profits, but the necessary Court-fees have not been deposited within the time fixed by the Court as provided by s. 11 of the Court-Fees Act (VII of 1870), the suit, that is, the claim in respect of those mesne profits, must be dismissed; after such dismissal no application for execution of the decree for mesne profits can be entertained, as no such decree is in existence. The word "suit" in the last part of para. 2 of s. 11 of the Court-Fees Act does not mean the entire suit; it means the claim in respect of the mesne profits. KEWAL KISHAN SINGH *v.* SOOKHARI.

[24 Calc. 173

——, S. 12.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[19 All. 165

——, S. 17.—*Suit for possession of immoveable property and for mesne profits or damages—"Distinct subjects"—Valuation of suit.*] A suit upon one and the same cause of action for possession of immoveable property and for mesne profits or damages for the wrongful retention of such property is not a suit embracing two or more distinct subjects within the meaning of s. 17 of Act VII of 1870; *Chamaili Rani* v. *Ram Dai*, I. L. R. 1 All. 552; *Mul Chand* v. *Shib Charan Lal*, I. L. R. 2 All. 676; *Chedi Lal* v. *Kirath Chand*, I. L. R. 2 All. 682; and *Kishori Lal Roy* v. *Sharut Chunder Mozumdar*, I. L. R. 8 Calc. 593, discussed. REFERENCE UNDER THE COURT-FEES ACT, 1870, S. 5.

[16 All. 401

——, S. 19D.—*Act XIII of* 1875, *s.* 6—*Exemption from probate duty—Joint family—Conveyance to four members of a joint family governed by the Mitakshara law as tenants in common—Survivorship.*] The deceased, who was a member of a joint Hindu family governed by Mitakshara law, left a will, of which he appointed his brothers the executors and trustees. The brothers, as executors, applied for probate, but claimed exemption from the payment of probate duty on the ground that the property was "joint ancestral property which would pass by survivorship." The petition

COURT-FEES ACT (VII OF 1870)— *continued.*

stated that in the lifetime of the testator he and his brothers, out of the income of the ancestral estate, purchased from the Corporation of Calcutta some plots of land which were conveyed to them as *tenants in common*: that the effect of this was to vest an undivided one-fourth share in the testator, which, on his death, would pass, not to the remaining coparceners under the rule of survivorship, but to his legal representatives; and that, in order that effect might be given to the rule of survivorship, it was necessary to obtain probate:—*Held*, that the property, though conveyed to the brothers as *tenants in common* vested in them as trustees for the benefit of all the coparceners, and consequently was not liable to duty. IN THE GOODS OF POKURMULL AUGURWALLAH.

[23 Calc. 980

——, s. 22.

See PENAL CODE, S. 186.

[22 Calc. 596

——, s. 26.—*Certificate of heirship—Succession Certificate Act (VII of 1889), ss. 17 and 20—Notification of Governor-General, No. 361, dated 18th April, 1883, Irregularity in observing directions of—Effect of, on validity of stamp.*] A certificate having been granted on an ordinary stamp of requisite value, it was contended that it was not properly stamped in accordance with the Court-Fees Act (VII of 1870) as required by s. 17 of the Succession Certificate Act (VII of 1889), because it did not bear upon it the words "Court-fees" as directed in the Notification of the Governor-General, No. 361, dated 18th April, 1883:—*Held*, that though s. 26 of the Court-Fees Act (VII of 1870) provides that the stamp used to denote the fee chargeable under the Act shall be of such particular kind as the Governor-General in India in Council may by Notification from time to time direct, and that, though the Governor-General had issued such Notification, still the direction in the Notification, that the stamp should bear the words "Court-fees," was not a matter on which he had authority to give any direction under the terms of s. 26 of the Court-Fees Act, and therefore could only be regarded as a departmental order, the non-observance of which could not invalidate the stamp for the purpose of the Act. ANNAPURNA BAI *v.* LAKSHMAN BHIKAJI VAKHARKAR.

[19 Bom. 145

1.—Sch. I, Art. 11.—*Duty payable on taking out probate or administration—Value of property not reduced to possession and as to which suit is brought.*] Under Art. 11 of Sch. I of the Court-Fees Act, duty is payable by a person taking out probate on the amount or value of the property in respect of which probate or letters of administration shall be granted, if the amount or value of such property exceeds Rs. 1,000. In a case where property has not been reduced into possession at the time of taking out probate, and the right to it is the subject of a suit, it is permissible to declare the value of the property as not exceeding Rs. 1,000. IN THE GOODS OF ABDOOL AZIZ.

[23 Calc. 577

2.—Sch. I, Art. 11.—*Probate duty—Assets in British India at date of death.*] Probate duty is payable only on assets which at the date of the testator's death are in British India. IN RE ABRAHAM.

[21 Bom. 139

3.—Sch. I, Art. 11.—*Probate fee—Doubtful debt.*] The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of probate as a will. IN THE GOODS OF RAM CHUNDER GHOSE.

[24 Calc. 567

4.—Sch. I, Art. 11.—*Locality of assets—Partner of firm with head office in London and branches in Calcutta and Bombay.*] *S* died in England in October, 1896, and probate of his will was obtained in England on 1st December, 1896. He left a large amount of property and credits in Bombay, and he was a partner in the firm of David Sassoon & Co., which had its head office in London and had branches in Bombay and Calcutta:—*Held*, that no probate duty was payable on the value of the share of the deceased as a partner in the firm of David Sassoon & Co., or the properties of the firm situated in British India at his death. IN THE GOODS OF SASSOON.

[21 Bom. 673

——, Sch. II, Art. 11.—*Memorandum of appeal from order under Companies Act (VI of 1882), s. 214—Decree—Valuation of appeal.*] An order under s. 214 of Act VI of 1882 (Indian Companies Act) is not a decree or an order having the force of a decree, and consequently an appeal from such an order to a High Court is properly stamped, with reference to the Court-Fees Act (VII of 1870), Sch. II, Art. 11 (*b*), with a Court-fee stamp of Rs. 2. REFERENCE UNDER COURT-FEES ACT.

[17 All. 238

COURTS (COLONIAL) JURISDICTION ACT, 1874 (37 & 38 Vict. c. 27.)

See OFFENCE COMMITTED ON THE HIGH SEAS.

[21 Calc. 782

COUSINS.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSINS.

[22 Calc. 339

COVENANT.

——, Breach of.

See BENAMI TRANSACTION—GENERAL CASES.

[19 Mad. 60

COVENANT—*concluded.*

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

[21 Bom. 175

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

[20 Bom. 439

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[21 Bom. 267

See VENDOR AND PURCHASER—BREACH OF COVENANT.

[21 Bom. 175

—— to repay mortgage money.

See LIMITATION ACT, ART. 147.

[19 Mad. 411

See TRANSFER OF PROPERTY ACT, S. 67.

[17 Mad. 131

[24 Calc. 677

COW, DEFINITION OF.

See PENAL CODE, S. 429.

[22 Calc. 457

COWRIE.

See GAMBLING ACT, S. 6.

[18 All. 23

[19 All. 311

CRABS.

See PREVENTION OF CRUELTY TO ANIMALS ACT.

[24 Calc. 881

CREDITOR.

See CASES UNDER DEBTOR AND CREDITOR.

——, Conveyance in fraud of.

See BENAMI TRANSACTION—GENERAL CASES.

[23 Calc. 460, 962, 962 note

See FRAUD—ALLEGING OR PLEADING FRAUD.

[20 Mad. 326

See FRAUD—EFFECT OF FRAUD.

[18 Mad. 378

[20 Mad. 323

See LIMITATION ACT, ART. 141.

[23 Calc. 460

—— of married woman.

See MARRIED WOMAN'S PROPERTY ACT, S. 8.

[18 Mad. 19

—— of testator.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[17 Mad. 373

CREDITOR—*concluded.*

——, Removal by, of debtor's property.

See THEFT.

[22 Calc. 669, 1017

[18 All. 88

——, Suit by.

See REPRESENTATIVE OF DECEASED PERSON.

[22 Calc. 903

CREMATION.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[19 Mad. 464

CRIMINAL BREACH OF TRUST.

See BANKERS.

[16 All. 88

See CHARGE—FORM OF CHARGE.

[17 All. 153

[18 All. 116

[24 Calc. 193

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST.

[19 All. 111

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749

1.—*Penal Code (Act XLV of* 1860), *ss.* 403 *and* 405—*Immoveable property.*] The property referred to in s. 403 of the Penal Code is, as in s. 403, moveable property, and criminal breach of trust cannot be committed in respect of immoveable property. *Reg.* v. *Girdhar Dharamdas*, 6 Bom. H. C. Cr. 33, followed. JUGDOWN SINHA *v.* QUEEN-EMPRESS.

[23 Calc. 372

2.—*Penal Code, s.* 408—*Criminal breach of trust by a servant—Criminal misappropriation.*] An accused person who was in the service of zemindars, and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the due date of a *kist* received from them a certain sum of money with no specific instruction as to its application. On receipt of that money, he paid a portion only of it into the Collectorate on account of the revenue, and having done so, he then altered the *challan* given back to him showing the amount actually paid, and made it appear that a much larger amount had been paid in than was the fact. This *challan* he sent to his employer for the purpose of showing the application of the money. He was charged (amongst other offences) with criminal breach of trust as a servant (s. 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid

CRIMINAL BREACH OF TRUST—*concluded.*

in by the altered *challan*. The accused was convicted on all the charges. It was contended that the charge under s. 408 was not sustainable, inasmuch as the money was not alleged to have been sent to the accused for the specific purpose of paying the Government revenue, and that the accounts between him and his employers had not been adjusted, and that it was not shown whether at the date of the alleged breach of trust the accused was indebted to his employer or the reverse:—*Held*, that as the money was sent to the accused immediately before the *kist* day, and the *challan* was sent to the employers showing in its altered state the amount really payable as revenue which nearly covered the whole amount remitted, it was reasonable to infer that the accused was aware of the implied purpose for which the money was remitted, and as he deposited a very much smaller amount than that remitted, and tried to pass off the altered *challan* as genuine, there was a dishonest misappropriation of the difference sufficient to constitute the offence under s. 408. LOLIT MOHAN SARKAR *v.* QUEEN-EMPRESS.

[22 Calc. 313

CRIMINAL COURT, ORDER OF.

See LETTERS PATENT, HIGH COURT, CL. 15.

[17 Mad. 105

CRIMINAL INTIMIDATION.

—*Penal Code* (*Act XLV of* 1860), *ss.* 503 *and* 506—*Threatening to obtain dismissal of Police constable.*] A threat of getting a Police constable dismissed from the Police service is not such a threat of injury as is punishable under s. 506 of the Indian Penal Code (XLV of 1860). *Reg.* v. *Moroba Bhaskarji*, 8 Bom. 101, followed. QUEEN-EMPRESS *v.* DADA HANMANT DANI.

[20 Bom. 794

CRIMINAL MISAPPROPRIATION.

See CRIMINAL BREACH OF TRUST.

[22 Calc. 313

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749

—*Penal Code* (*Act XLV of* 1860), *s.* 403—*Moveable property—Property found in an open plain.*] The accused, finding a gold mohur on an open plain, sold it the next day to a shroff for the full value, and appropriated the sale-proceeds:—*Held* that, in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation under s. 403 of the Penal Code, QUEEN-EMPRESS *v.* SITA.

[18 Bom. 212

CRIMINAL PROCEDURE CODE (ACT X OF 1872).

——, s. 140.

See COMPLAINTS—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[18 All. 465

CRIMINAL PROCEDURE CODE (ACT X OF 1882).

See BOMBAY VILLAGE POLICE ACT.

[19 Bom. 612

See OFFENCE COMMITTED ON HIGH SEAS.

[21 Calc. 782

——, Chap. XXII (ss. 260—265).

See CATTLE TRESPASS ACT.

[23 Calc. 248

——, Chap. XL (ss. 503—508).

See COMMISSION—CRIMINAL CASES.

[19 Bom. 749

——, s. 1.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 300

——, s. 4.

See s. 487.

[20 Mad. 383

See CATTLE TRESPASS ACT.

[23 Calc. 248

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[17 Mad. 260

[20 Mad. 470

——, s. 11.

See SENTENCE—GENERAL CASES.

[20 Mad. 444

——, s. 12.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATES.

[19 All. 114

——, s. 16.

See BENCH OF MAGISTRATES.

[18 Mad. 394

——, s. 28.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 442

——, s. 29.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—OPIUM ACT.

[19 All. 465

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 54.
See WRONGFUL CONFINEMENT.
[19 Bom. 72

——, ss. 55 and 56.
See PENAL CODE, s. 332.
[18 All. 246

——, s. 75.
See PENAL CODE, s. 186.
[23 Calc. 896

——, s. 76.
See PENAL CODE, s. 186.
[24 Calc. 320
See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[24 Calc. 320

——, s. 80.
See PENAL CODE, s. 186.
[23 Calc. 896

——, s. 81.
See PENAL CODE, s. 186.
[24 Calc. 320
See WITNESS—CRIMINAL CASES— SUMMONING WITNESSES.
[24 Calc. 320

——, s. 83.
See WARRANT OF ARREST.
[20 Mad. 235, 457

——, s. 87.
See ABSCONDING OFFENDER.
[19 Mad. 3

——, s. 88.
See ABSCONDING OFFENDER.
[19 Mad. 3
[20 Mad. 88

——, s. 89.
See ABSCONDING OFFENDER.
[19 Mad. 3

——, s. 90.
See PENAL CODE, s. 186.
[24 Calc. 320

——, s. 106.
See RECOGNIZANCE TO KEEP PEACE.
[21 Calc. 622
[17 All. 67

——, s. 107.
See RECOGNIZANCE TO KEEP PEACE.
[24 Calc. 344

——, s. 110.
See SECURITY FOR GOOD BEHAVIOUR.
[16 All. 9
[19 All. 291

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 114.
See PENAL CODE, s. 332.
[18 All. 246

——, s. 117.
See EVIDENCE—CRIMINAL CASES—CHARACTER.
[23 Calc. 621
See SECURITY FOR GOOD BEHAVIOUR.
[19 All. 291

——, s. 118.
See SECURITY FOR GOOD BEHAVIOUR.
[24 Calc. 155

——, Order of Magistrate under.
See REFERENCE TO HIGH COURT—CRIMINAL CASES.
[23 Calc. 249

——, s. 123.
See SECURITY FOR GOOD BEHAVIOUR.
[24 Calc. 155

——, Order of Sessions Judge under.
See REFERENCE TO HIGH COURT—CRIMINAL CASES.
[23 Calc. 249

——, ss. 133—138.
See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.
[18 All. 158
See CASES UNDER NUISANCE — UNDER CRIMINAL PROCEDURE CODE.

——, s. 138.
See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.
[23 Calc. 499

——, s. 143.
See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.
[19 Mad. 464

——, s. 144.
See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[17 All. 485
See CASES UNDER NUISANCE — UNDER CRIMINAL PROCEDURE CODE.
See REVISION—CRIMINAL CASES— MISCELLANEOUS CASES.
[18 Mad. 402

——, Proceeding under.
See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.
[19 Mad. 18

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 145.

See LIMITATION ACT, ART. 47.

[23 Calc. 731

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO.

——, s. 146.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.

[22 Calc. 297
[18 Mad. 41

——, s. 147.

See EASEMENT.

[23 Calc. 55

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, &c.

[21 Calc. 727
[23 Calc. 55, 557

——, s. 148.

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

——, s. 155.

See OPIUM ACT, S. 9.

[24 Calc. 691

——, s. 156.

See OPIUM ACT, S. 9.

[24 Calc. 691

——, s. 157.

See ACCUSED PERSON, RIGHT OF.

[20 Mad. 189

See EVIDENCE ACT, S. 74.

[20 Mad. 189

——, s. 160.

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[24 Calc. 320

——, s. 161.

See ACCUSED PERSON, RIGHT OF.

[19 Mad. 14
[19 All. 390

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE-OFFICERS.

[16 All. 207
[17 All. 57
[19 All. 390

——, s. 162.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE-OFFICERS.

[16 All. 207
[17 All. 57
[19 All. 390

——, s. 164.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[21 Bom. 495
[18 All. 78

——, s. 165.

See OPIUM ACT, S. 9.

[24 Calc. 691

——, s. 167.

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE-OFFICERS.

[19 All. 390

——, s. 168.

See ACCUSED PERSON, RIGHT OF.

[20 Mad. 189

See EVIDENCE ACT, S. 74.

[20 Mad. 189

——, s. 172.

See ACCUSED PERSON, RIGHT OF.

[19 All. 390
[19 Mad. 14

——, s. 173.

See ACCUSED PERSON, RIGHT OF.

[20 Mad. 189

See EVIDENCE ACT, S. 74.

[20 Mad. 189

——, s. 177.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[24 Calc. 638

——, s. 179.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST.

[19 All. 111

——, s. 180.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[18 All. 350

——, s. 185.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST.

[19 All. 111

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 188.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

——, s. 191.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[18 All. 465

See DEFAMATION.

[19 Bom. 51

See FALSE CHARGE.

[19 Bom. 51

——, s. 192.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 300, 442

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

[22 Calc. 898

See TRANSFER OF CRIMINAL CASE.

[19 All. 249

——, s. 193.

See SESSIONS JUDGE, JURISDICTION OF.

[22 Calc. 50

——, s. 195.

See s. 478.

[22 Calc. 1004

See LETTERS PATENT, HIGH COURT, CL. 15.

[17 Mad. 105

See CASES UNDER SANCTION FOR PROSECUTION.

——, s. 197.

See DEFAMATION.

[19 Bom. 51

See FALSE CHARGE.

[19 Bom. 51

——, s. 200.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[18 All. 221

——, s. 202.

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS.

[20 Mad. 387

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[24 Calc. 167

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[24 Calc. 167

——, s. 203

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[23 Calc. 983

[24 Calc. 286

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL.

[20 Mad. 388

——, ss. 204 and 205.

See PARDANASHIN WOMEN.

[21 Calc. 587

——, s. 210.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[21 Calc. 642

[18 All. 380

——, s 211.

See WITNESS — CRIMINAL CASES — SUMMONING WITNESSES.

[19 All. 502

——, s. 212.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[18 All. 380

——, ss. 221 and 222.

See CRIMINAL TRESPASS.

[22 Calc. 391

——, s. 225.

See UNLAWFUL ASSEMBLY.

[22 Calc. 276

——, s. 235.

See s. 403.

[23 Calc. 174

——, s. 236.

See ACQUITTAL.

[22 Calc. 377

See CHARGE—FORM OF CHARGE.

[21 Calc. 955

——, s. 238.

See VERDICT OF JURY—GENERAL CASES.

[20 Bom. 215

——, s. 238.—"*Minor offence,*" *Conviction of without formal charge—Penal Code* (*Act XLV of* 1860), *ss.* 365, 366 *and* 376—*Criminal Procedure Code*, (1882), *s.* 307.] An offence under s. 365 of the Penal Code is, within the meaning of s. 238 of the Criminal Procedure Code, a minor offence as compared with offences under ss. 366 and 376 of the

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

Penal Code ; and the High Court in dealing with a case under s. 307 of the Criminal Procedure Code can convict an accused of the former offence without a formal charge having been framed. *Per* BANERJEE, J.—The words "minor offence" have not been defined by law; they are to be taken not in any technical sense, but in their ordinary sense. QUEEN-EMPRESS *v.* SITANATH MANDAL.

[22 Calc. 1006

——, s. 239.

See BANKERS.

[16 All. 88

——, s. 254.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[24 Calc. 429

——, ss. 256 and 257.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[21 Calc. 642

——, s. 260.

See CRIMINAL PROCEEDINGS.

[19 Mad. 269

——, ss. 260 to 265 (Chap. XXII).

See CATTLE TRESPASS ACT.

[23 Calc. 248

——, s. 263 (h).—*Summary trial—Nature of Magistrate's statement of the reason for a conviction.*] Under s. 263 (*h*) of the Code of Criminal Procedure (Act X of 1882), a Magistrate, in recording his reasons for a conviction, must state them so that the High Court on revision may judge whether there were sufficient materials before him to support the conviction. *Empress* v. *Panjab Singh*, I. L. R. 6 Calc. 579, followed. QUEEN-EMPRESS *v.* SHIDGAUDA.

[18 Bom. 97

——, s. 273.

See PENAL CODE, s. 372.

[21 Calc. 97

——, s. 288.

See EVIDENCE—CRIMINAL CASES—DEPOSITION.

[23 Calc. 361

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[21 Calc. 642

——, s. 289.

See CRIMINAL PROCEEDINGS.

[23 Calc. 252

See RIGHT OF REPLY.

[18 Bom. 364

——, s. 290.

See RIGHT OF REPLY.

[18 Bom. 364

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 292.

See RIGHT OF REPLY.

[18 Bom. 364
[16 All. 88

——, s. 297.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[23 Calc. 252

——, s. 298.

See VERDICT OF JURY—GENERAL CASES.

[19 Bom. 735

——, s. 302.

See VERDICT OF JURY—GENERAL CASES.

[19 Bom. 735

——, s. 303.

See CHARGE TO JURY—MISDIRECTION.

[21 Calc. 955

——, s. 307.

See s. 238.

[22 Calc. 1006

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[20 Bom. 215

——, s. 337.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

——, s. 339.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

See PARDON.

[24 Calc. 492

——, s. 340.

See PLEADER—APPOINTMENT AND APPEARANCE.

[23 Calc. 493

——, s. 342.

See FALSE EVIDENCE—GENERALLY.

[19 All. 200

——, s. 344.

See CRIMINAL PROCEEDINGS.

[19 Mad. 375

——, s. 345.

See COMPOUNDING OFFENCE.

[21 Calc. 103

——, s. 350.

See BENCH OF MAGISTRATES.

[18 Mad. 394
[23 Calc. 194

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 355.

See CRIMINAL PROCEEDINGS.

[19 Mad. 269

——, s. 364.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[21 Calc. 642
[22 Calc. 817
[21 Bom. 495

——, Omission to record statement under.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[24 Calc. 499

——, s. 366.

See JUDGMENT—CRIMINAL CASES.

[21 Calc. 121
[23 Calc. 502

——, s. 367.

See CASES UNDER JUDGMENT—CRIMINAL CASES.

——, s. 374.

See CONFESSION—CONFESSION TO MAGISTRATE.

[22 Calc. 50

——, s. 386.

See CATTLE TRESPASS ACT, s. 22.

22 Calc. 139

See COMPENSATION—CRIMINAL CASES—COMPENSATION FOR LOSS OR INJURY CAUSED BY OFFENCE.

[22 Calc. 139
[19 Mad. 238

See COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[21 Calc. 979

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[22 Calc. 935

——, s. 403.

See ACQUITTAL.

[22 Calc. 377

——, s. 403.—*Previous conviction or acquittal—Second trial upon the same facts for a different offence—Penal Code, ss.* 486 *and* 487—*Bengal Excise Act (Bengal Act VII of* 1868), *s.* 61—*Merchandise Marks Act (IV of* 1889), *ss.* 6 *and* 7—*Criminal Procedure Code, s.* 235.] The accused had been prosecuted and convicted under s. 61 of the Bengal Excise Act (Bengal Act VII of 1878), and the proceedings were instituted against him under ss. 486 and 487 of the Penal Code.

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

and ss. 6 and 7 of the Merchandise Marks Act (IV of 1889). On an application to quash the proceedings on the ground that the accused had been at the first trial put in peril of a conviction for the latter offences, and therefore the first trial operated as a bar to the institution of the present proceedings:—*Held*, the provisions of s. 403 of the Criminal Procedure Code did not operate as a bar to the institution of the present proceedings. Under the second part of that section, the fact of the accused having been charged at the first trial with one offence only did not prevent the institution of a separate proceeding in respect of some other offence which was disclosed during the course of the first trial. QUEEN-EMPRESS *v.* CROFT.

[23 Calc. 174

——, s. 407.

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[18 Mad. 487

——, s. 411.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[20 Bom. 145

——, s. 417.

See APPEAL IN CRIMINAL CASES—ACQUITTAL, APPEALS FROM.

[16 All. 212
[19 Bom. 51

——, s. 418.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[21 Calc. 955

——, s. 419.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[19 Mad. 354
[20 Mad. 87

——, s. 421.

See JUDGMENT—CRIMINAL CASES.

[21 Calc. 92
[17 All. 241
[20 Bom. 540

See REVIEW—CRIMINAL CASES.

[19 Bom. 732

——, s. 423.

See ACQUITTAL.

[22 Calc. 377

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[21 Calc. 955
[23 Calc. 975
[18 Bom. 751
[18 All. 301
[24 Calc. 316, 317 note

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

See COMMITMENT.

[23 Calc. 350

See COMPLAINT — DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[24 Calc. 528

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[17 All. 67

See SESSIONS JUDGE, JURISDICTION OF.

[18 Bom. 751
[18 All. 301

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[23 Calc. 252

——, s. 424.

See JUDGMENT—CRIMINAL CASES.

[22 Calc. 241
[23 Calc. 420
[19 All. 506

——, s. 430.

See REVIEW—CRIMINAL CASES.

[19 Bom. 732

——, s. 431.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[19 Bom. 714

——, s. 435.

See REVISION—CRIMINAL CASES—GENERALLY.

[19 Mad. 238

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[18 Mad. 402

——, s. 437.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[24 Calc. 395

——, s. 437.—*Jurisdiction of Sessions Judge and Magistrate to grant further inquiry—Power of the Sessions Judge to interfere with orders passed by the District Magistrate.*] Both the Sessions Judge and the District Magistrate are competent, under s. 437 of the Criminal Procedure Code, to order a further inquiry; but the Sessions Judge has no jurisdiction to review an order made by the District Magistrate under that section refusing a further inquiry. It is open to the Sessions Judge to refer the matter to the High Court under s. 438. DARBARI MANDAR *v.* JAGOO LAL.

[22 Calc. 573

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 438.

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

[23 Calc. 249, 250

——, s. 439.

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[24 Calc. 528

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

[22 Calc. 387

See PRACTICE—CRIMINAL CASES—REVISION.

[21 Calc. 827

See REVISION—CRIMINAL CASES—GENERALLY.

[22 Calc. 391

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[16 All. 80

See REVISION—CRIMINAL CASES—QUESTIONS OF FACT.

[21 Calc. 931
[22 Calc. 998

——, s. 451.—"*Europeans*," *Meaning of.*] The word "Europeans" in s. 451 of the Code of Criminal Procedure means persons born in Europe. QUEEN-EMPRESS *v.* MOSS.

[16 All. 88

——, s. 476.

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[16 All. 80

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION.

[18 All. 213

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[16 All. 80
[18 Mad. 487
[23 Calc. 532
[19 Mad. 18

——, s. 478.

See CRIMINAL PROCEEDINGS.

[18 Bom. 581

——, s. 478.—*Forged documents filed in Court—Order of commitment for trial—"Any such offence" in s. 478, Meaning of—Criminal Procedure Code, s. 195.*] Certain documents were filed annexed to a petition in a suit pending before a Munsif, but were not given in evidence. The Munsif, on suspicion that they had been tampered

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

with, held an inquiry and committed the petitioners for trial by the Court of Session:—*Held*, that it was a proper commitment under s. 478 of the Criminal Procedure Code. The words "any such offence" in that section mean an offence referred to in s. 195 of the Code, and not an offence referred to in that section qualified by the circumstances under which it is committed. AKHIL CHANDRA DE *v.* QUEEN-EMPRESS.

[22 Calc. 1004

——, s. 487.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[18 Bom. 380

——, s. 487, and ss. 4 and 195.—*Judicial proceedings—Magistrate, Jurisdiction of.*] A Magistrate, who has refused to set aside an order sanctioning a prosecution on the charge of perjury, has no jurisdiction under Criminal Procedure Code, s. 487, to try the case himself. QUEEN-EMPRESS *v.* SESHADRI AYYANGAR.

[20 Mad. 383

——, s. 488.

See CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT, OR OTHERWISE, TO BE WITNESSES.

[18 All. 107

——, ss. 489 and 490.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[19 All. 50

——, s. 491.

See CUSTODY OF CHILD.

[23 Calc. 290

See FOREIGNERS.

[18 Bom. 636

See WARRANT OF ARREST.

[18 Bom. 636

——, s. 503.

See COMMISSION—CRIMINAL CASES.

[19 Bom. 749

[24 Calc. 551

——, ss. 505 and 506.

See COMMISSION—CRIMINAL CASES.

[24 Calc. 551

——, s. 507.

See COMMISSION—CRIMINAL CASES.

[19 Bom. 749

[24 Calc. 551

——, s. 514.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ABKARI ACT.

[18 Mad. 48

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 517.—*Order as to disposal of property as to which no offence has been committed—Property found by Police in possession of accused—Magistrate, Power of.*] The accused was convicted of criminal breach of trust in respect of certain money belonging to the complainant, and, on his conviction, the Magistrate made an order, under s. 517 of the Code of Criminal Procedure, directing that an amount equal to the monies embezzled should be repaid to the complainant out of certain sums of money found by the Police on the person of the accused:—*Held*, that the Magistrate had no power to make the order under s. 517 of the Criminal Procedure Code, there being nothing to show that any offence had been committed with regard to the property, or that it had been used for the commission of any offence. QUEEN-EMPRESS *v.* FATTAH CHAND.

[24 Calc. 499

——, s. 523.

See TREASURE TROVE.

[19 Bom. 668

——, s. 523.—*Property seized by Police—Seizure of property on suspicion—Magistrate, Duty of—Procedure.*] By the provisions of s. 523 of the Code of Criminal Procedure, it is not intended that any final steps should be taken by the Magistrate, nor is he bound to take any final steps to ascertain whether the property seized on suspicion belongs to the person in whose possession it was found, until after the expiry of the six months mentioned in the section; but when the proclamation has been issued, and the six months have expired, then, under the provisions of s. 524, the person in whose possession the property was found can come forward and show that it is his own. QUEEN-EMPRESS *v.* MAHALABUDDIN.

[22 Calc. 761

——, s. 524.

See RIGHT OF SUIT—PROPERTY AT DISPOSAL OF GOVERNMENT.

[19 Bom. 668

See TREASURE TROVE.

[19 Bom. 668

——, s. 526.

See CRIMINAL PROCEEDINGS.

[19 Mad. 375

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[23 Calc. 44

See SECURITY FOR GOOD BEHAVIOUR.

[16 All. 9

[19 All. 291

See CASES UNDER TRANSFER OF CRIMINAL CASE.

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 528.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF CASE.

[22 Calc. 898

——, s. 529.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 442

——, s. 531.

See CRIMINAL PROCEEDINGS.

[17 All. 36

——, s. 532.

See CRIMINAL PROCEEDINGS.

[17 Mad. 402

——, s. 533.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[21 Bom. 495

——, s. 537.

See ABSCONDING OFFENDER.

[19 Mad. 3

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[21 Calc. 955

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[23 Calc. 983

See CASES UNDER CRIMINAL PROCEEDINGS.

See CRIMINAL TRESPASS.

[22 Calc. 391

See JUDGMENT—CRIMINAL CASES.

[21 Calc. 121
[23 Calc. 502

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[23 Calc. 328

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 442

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS.

[21 Calc. 404

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.

[22 Calc. 176

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*concluded.*

——, s. 540.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[24 Calc. 167

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[24 Calc. 167, 288

——, s. 545.

See FINE.

[19 All. 112

——, s. 547.

See FINE.

[19 All. 112

——, s. 555.

See CASES UNDER MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

——, s. 560.

See CASES UNDER COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

CRIMINAL PROCEEDINGS.

——, Institution of.

See FALSE CHARGE.

[16 All. 124
[20 Mad. 79

——, Irregularity in.

See ABSCONDING OFFENDER.

[19 Mad. 3

See JUDGMENT—CRIMINAL CASES.

[21 Calc. 121

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.

[22 Calc. 176

——, Revival of.

See COMPLAINT—DISMISSAL OF COMPLAINANT—EFFECT OF DISMISSAL.

[23 Calc. 983
[24 Calc. 286, 528

1.—*Irregularity in commitment—Criminal Procedure Code* (1882), *ss.* 532 *and* 537—*Commitment to Sessions Court by Magistrate having no jurisdiction over place where alleged offence was committed.*] A Magistrate, who commits a case for trial by a Sessions Court, does so in the exercise of powers duly conferred upon him, and the fact that he had no territorial jurisdiction over the place where the alleged offence was committed, and that an objection to the committal on this ground was taken before the commitment, is no

CRIMINAL PROCEEDINGS—*continued.*

ground for the Court to which the commitment is made quashing it under s. 532 nor under s. 537 of the Criminal Procedure Code. *Queen-Empress* v. *Ingle*, I. L. R. 16 Bom. 200, followed. QUEEN-EMPRESS *v.* ABBI REDDI.

[17 Mad. 402

2.—*Irregularity in holding trial without jurisdiction—Criminal Procedure Code* (1882), *s.* 531—*Sessions Judge, Jurisdiction of—Appeal presented within, but heard outside, the local limits of the jurisdiction of a Sessions Court.*] A criminal appeal was presented to the Sessions Judge of the Bijnor-Budaun Division at Bijnor within the said Sessions division, but was heard by the said Judge at Moradabad, at which place he was empowered to exercise civil but not criminal jurisdiction:—*Held*, that the trial of such appeal at Moradabad was an irregularity, but no failure of justice being shown to have been occasioned thereby, it was covered by s. 531 of the Code of Criminal Procedure, and did not render the trial of the appeal a nullity. QUEEN-EMPRESS *v.* FAZL AZIM.

[17 All. 36

3.—*Irregularity in omitting to call on accused for defence—Criminal Procedure Code* (1882), *s.* 289, *s.* 423, *cl.* (*d*), *and s.* 537—*Misdirection to jury.*] The formality of calling upon an accused person to enter on his defence under the provisions of s. 289 of the Criminal Procedure Code is not a mere formality, but is an essential part of a criminal trial. Omission to do so occasions a failure of justice, and is not cured by s. 537 of the Code. To allow the jury to pronounce their verdict before the accused is called upon to enter on his defence is a misdirection, though the Judge omits to charge the jury at all. In such a case, cl. (*d*) of s. 423 of the Criminal Procedure Code does not stand in the way of the Appellate Court's interfering with the verdict of the jury. QUEEN-EMPRESS *v.* IMAM ALI KHAN *alias* NATHU KHAN.

[23 Calc. 252

4.—*Irregularity in omitting to examine witnesses—Trial by jury before Sessions Judge—Verdict of acquittal allowed after examination of some only of the witnesses for the prosecution.*] Certain persons were tried in a Sessions Court for the offence of dacoity. Seven witnesses had been examined for the prosecution by the committing Magistrate and were bound over to give evidence at the trial. After five witnesses had been examined, the Judge asked the jury whether they wished to hear any more evidence, and, on their stating that they did not believe the evidence and wished to stop the case, the Judge recorded a verdict of acquittal:—*Held*, that the procedure adopted was wrong, and that no final opinion as to the falsehood or insufficiency of the prosecution evidence ought to have been arrived at until the two remaining witnesses had been examined. QUEEN-EMPRESS *v.* RAMALINGAM.

[20 Mad. 445

CRIMINAL PROCEEDINGS—*continued.*

5.—*Irregularity in recording evidence in summons case—Criminal Procedure Code* (1882), *ss.* 260 (*d*), 355 *and* 537—*Evidence recorded by Native Magistrate in English.*] A Native Sub-Magistrate, who had not been authorized to take down evidence in English, recorded the memorandum of the substance of the evidence taken under s. 355 in that language:—*Held*, that there was no provision in the Code prohibiting this procedure, and that, at any rate, it was merely an irregularity which would not vitiate the trial. QUEEN-EMPRESS *v.* GOPAL GOUNDAN.

[19 Mad. 269

6.—*Stay of criminal proceedings pending civil litigation—Civil Procedure Code* (1882), *s.* 278—*Inquiry into claim to attached property—Subsequent civil suit by claimant to establish his right to the property—Criminal Procedure Code* (1882), *s.* 478.] It is not an invariable rule that criminal proceedings should be stayed during the pendency of civil litigation regarding the same subject-matter. Certain property was attached in execution of a decree. Thereupon accused No. 1 applied to have the attachment raised, on the ground that he had purchased the property from the judgment-debtor under a sale-deed executed long before the date of the attachment. In the summary inquiry, which was made under s. 278 of the Code of Civil Procedure (Act XIV of 1882), he produced the sale-deed, and accused No. 2 was called as his witness and supported his claim. The Subordinate Judge found that the deed was a forgery, and rejected the claim. Proceeding then under s. 478 of the Code of Criminal Procedure (Act X of 1882), he held the inquiry directed by that section, and committed both the accused to the Sessions Court on charges of perjury and forgery. During the pendency of the inquiry under s. 478, the accused No. 1 filed a civil suit to establish the genuineness of the sale-deed and set aside the attachment. He also applied to the High Court to quash the commitment or stay the criminal proceedings, pending the disposal of the civil suit:—*Held*, refusing the application, that the mere fact that a regular suit was filed to establish the genuineness of the sale-deed was not a sufficient ground for quashing the commitment, or for adjourning the trial pending the hearing of the civil suit. IN RE DEVJI VALAD BHAVANI.

[18 Bom. 581

7.—*Power of the High Court to stay proceedings before Magistrate pending a civil suit*]. *Per* RAMPINI, J.—The High Court has no power to direct that criminal proceedings in the Court of a Magistrate should be stayed, until the disposal of a civil suit, in which the question at issue in the criminal proceedings shall have been decided. *In the Matter of Ram Prosad Hazra*, B. L. R. Sup. Vol. 426, followed. It is very doubtful if the High Court has any power to pass an order *quashing* the proceedings before a Magistrate. No section of the Criminal Procedure Code expressly authorizes the High Court to quash pending proceedings. *Per* GHOSE, J.—A proceed-

CRIMINAL PROCEEDINGS—*continued.*

ing in a Criminal Court should not, as a general rule, be stayed pending the decision of the civil suit in regard to the same subject-matter; but ordinarily it is not desirable, if the parties to the two proceedings are substantially the same, and the prosecution is but a private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time. It is open to the Magistrate, having regard to the facts of the case before him, to consider whether it is not desirable that the proceedings in his Court should be stayed, till the decision of the civil suit or for a limited period of time; and it is also open to him to put the defendant on terms as to appearance or otherwise, if he does stay proceedings. The High Court has the power to order a Magistrate to stay proceedings in his Court, if a sufficient cause in that behalf is made out. But, inasmuch as the Legislature has given him the power to regulate the proceedings in his own Court, the direction should ordinarily be left to him either to stay proceedings or not, as he, in the circumstances of each case, may think right and proper. RAJ KUMARI DEBI *v.* BAMA SUNDARI DEBI.

[23 Calc. 610

8.—*Application for transfer of case—Adjournment of case—Ground for adjournment—Order of transfer by High Court brought to notice of Court by telegram to Vakil—Absence of witnesses—Criminal Procedure Code* (1882), *ss.* 344, 526 *and* 526*A*.] The trial of a charge under s. 193, Penal Code, was fixed for the November sessions, but, on the 17th October, 1895, on prisoner's application, the trial was adjourned to the 2nd December, 1895. On 20th November, the prisoner's Vakil put in a petition, alleging that he had moved the High Court for a transfer of the case. On this petition coming on for disposal, the prisoner's Vakil moved *orally* for an adjournment under s. 526A, Criminal Procedure Code, which was refused. On the 30th November, the prisoner's Vakil put in a petition in which he prayed for an adjournment under s. 526A. This petition was refused, and the trial began on the 2nd December, and judgment was written and pronounced on the 5th December. In the meantime an application had been made to the High Court for a transfer, and that petition was disposed of on the 4th December by an order granting the transfer prayed, the High Court apparently being not aware that the trial was at that time proceeding before the Sessions Court. On the 5th December, after the trial in the Sessions Court was concluded, and before judgment was delivered, a fresh petition was presented for an adjournment on the ground that a telegram had been received from the High Court transferring the case, but the Sessions Judge refused to act upon it in the absence of orders from the High Court, and delivered judgment convicting the prisoner. During the trial before the Sessions Court, the prisoner applied for an adjournment on the ground that two witnesses for the defence were absent, one being too ill to attend, the other not having been served with the summons; but the Sessions Judge considering the application was made merely for purposes of

CRIMINAL PROCEEDINGS—*concluded.*

delay and to defeat the ends of justice, and that their evidence would not be material, refused to adjourn the case for their evidence to be recorded:—*Held*, that s. 526A, Criminal Procedure Code, is imperative, but that the object of ss. 344 and 526, when read together, is merely to give a party reasonable time to move the High Court and obtain its orders; and that, in the present case, there was sufficient time for such application to have been made, if due diligence had been observed:—*Held*, also, that the order for transfer made on the 4th December, which, in fact, did not reach the Judge till after judgment was pronounced, did not vitiate the proceedings; and that the Sessions Judge was not wrong in refusing to adjourn the case on the strength of a telegram said to have been received by prisoner's Vakil stating that the High Court has ordered a transfer:—*Held*, further, that the Sessions Judge ought not to have refused to adjourn the case in order to obtain the evidence of the two absent witnesses, and that their evidence was material and must be recorded and certified to the High Court under s. 428, Criminal Procedure Code. QUEEN-EMPRESS *v.* VIRASAMI.

[19 Mad. 375

CRIMINAL TRESPASS.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[21 Bom. 536

1.—*House trespass—Possession of property the subject of criminal trespass—Penal Code, ss.* 441, 442 *and* 448.] *C*, a ratepayer in a municipality, who had filed a petition against an assessment which in his absence had been dismissed, entered a room where a Committee of the Municipal Commissioners were seated hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman of the Committee ordered him to leave the room, and on his refusal to do so, he was turned out. Outside the room in the verandah, he addressed the crowd complaining that no justice was to be obtained from the Committee. *C* was prosecuted on these facts at the instance of the Chairman of the Committee and convicted of house trespass under s. 448 of the Penal Code:—*Held*, that the conviction was wrong, and that no offence had been committed. The prosecution was bound to prove in order to support a conviction of a charge under s. 441 or s. 442, that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345 of the Code of Criminal Procedure, and the complainant had failed to prove that the room was in his possession, and had in fact shown that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he might be, who had the immediate right to such possession:—*Held*, further, that even if the complainant could be held to be in possession of the room, there was no evidence of

CRIMINAL TRESPASS—*continued.*

any intent to commit an offence or to intimidate, insult, or annoy, any person, it appearing that the object of the accused in going into and remaining in the room was to endeavour to induce the complainant and his colleagues to reconsider their decision, the verbal insult on which the conviction was based having been uttered after *C* had left the room. CHANDI PERSHAD *v.* EVANS.

[22 Calc. 123

2.—*Penal Code, ss.* 441, 456, 457 *and* 509—*Lurking house trespass by night—Intrusion on privacy—Intention—Charge, Form of—Criminal Procedure Code* (1882), *ss.* 221, 222 *and* 537.] A conviction for lurking house trespass by night under s. 456 of the Penal Code is not bad for want of the specification of the intention in the charge, but one under s. 457 cannot be sustained without such specification. In a charge under the former section, though a guilty intention must be proved, it is not necessary to prove which of the several guilty intentions the accused had; it will be enough if it is shown that the intention must have been one or other of those specified in s. 441, though it may not be certain which it was. An accused person, the landlord of a house in which he occupied the lower flat, was found in the middle of the night in the room of the complainant, one of his tenants, upstairs, in which the complainant and his wife were at the time sleeping. Upon being detected, the accused was subjected to very severe treatment, but did not utter a word of protestation of innocence or make any show of remonstrance, and when questioned said, "I have committed a fault, pardon me." He was arrested upon a charge under s. 456 of the Penal Code, the criminal intention alleged being that of committing theft. The charge framed by the Magistrate did not specify any intention, and the Magistrate came to the conclusion that the trespass was not committed by the accused, who was a wealthy man, with that intention. He found, however, that the complainant had suppressed some important facts, and that he was not in his wife's room when the accused entered it, and relying on the decision in *Koilash Chandra Chakrabarty* v. *The Queen-Empress*, I. L. R. 16 Calc. 657, he convicted the accused. On appeal, the Sessions Judge, though finding that the Magistrate's views were against the evidence, upheld the conviction without finding what specifically was the intention with which the entry was made. In revision, it was contended that the conviction was bad (1) because no guilty intention was set out in the charge: (2) because no such intention was proved by the evidence; and (3) because no such intension was specifically found by the Session Judge:—*Held*, that the first contention was not sustainable for the reasons above stated. Even if it had been necessary to specify the intention in the charge, it would have to be shown under the provisions of s. 537 of the Code of Criminal Procedure that the omission had occasioned a failure of justice, and, having regard to the nature of the charge and the line of defence adopted, the accused had not, in any way, been prejudiced in his defence:—*Held*, as regards the second contention, that though it was not certain what the precise intention of the accused was in committing the trespass, it was clear that it must have been with one or other of the intentions specified in s. 441 of the Penal Code, as, judging from the time, the place and manner in which the trespass was committed and the conduct of the accused when discovered, it was impossible to suppose that the trespass could have been committed either unintentionally or with any innocent intention, and that it must have been committed with the intention of committing some offence, but that the accused was entitled to have it taken that it was with the least possible culpable intention, namely, an offence under s. 509 of the Penal Code:—*Held*, as regards the third contention, that in exercising its powers under s. 439 of the Code of Criminal Procedure, it is open to the High Court to alter any finding and confirm a conviction, and that, if the evidence on the record in a case be sufficient to warrant a conviction, the Court would not be justified in setting such conviction aside, merely because the view taken of the evidence by the lower Court is not sustainable, or some fact which ought to have been found by that Court is not found or found incorrectly. BALMAKAND RAM *v.* GHANSAMRAM.

[22 Calc. 391

3.—*Penal Code* (*Act XLV of* 1860), *ss.* 441, 456 *and* 509—*House-breaking by night—Intent—Intrusion upon privacy.*] The accused in the middle of the night effected an entry into a room occupied by four women. On an alarm being given, and an attempt made to capture him, he escaped. He was charged with an offence under s. 456 of the Penal Code. The defence set up was disbelieved by both the lower Courts. Neither Court found specifically what was the intention with which the accused entered the room, but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women. There was no evidence that he had been invited by her to go there. The lower Courts convicted the accused under s. 456. It was contended that, as the prosecution had failed to prove that the entry was made with intent to commit any offence, the conviction was illegal:—*Held*, that the facts proved were good evidence of an intent and of an intrusion on privacy within the meaning of s. 509 of the Penal Code, and that therefore the intent to commit an offence within the meaning of s. 441 was made out. *Balmakand Ram* v. *Ghunsamram*, I. L. R. 22 Calc. 391, followed. PREMANUNDO SHAHA *v.* BRINDABUN CHUNG.

[22 Calc. 994

4.—*Penal Code* (*Act XLV of* 1860), *s.* 448—*Intent.*] Although a trespasser knows that his act, if discovered, will be likely to cause annoyance, it does not follow that he does the act with that intent. QUEEN-EMPRESS *v.* RAYAPADAYACHI.

[19 Mad. 240

CRIMINAL TRESPASS—*concluded.*

5.—*Penal Code (Act XI of 1860), s. 451—House trespass with intent to commit adultery—Evidence.*] To sustain a conviction under s. 451 of the Penal Code for the offence of house trespass with intent to commit an offence, the prospective offence being adultery, it is necessary to show that there has been no consent or connivance on the part of the husband of the woman, the intent to commit adultery with whom is charged against the accused. BRIJ BASI *v.* QUEEN-EMPRESS.

[19 All. 74

CROPS.

——, Assessment of price of.

See N.-W. P. RENT ACT, S. 42.

[19 All. 68

——, Deposit of, by order of Collector.

See BENGAL TENANCY ACT, SS. 69 AND 70.

[22 Calc. 480

——, Gathered.

See MADRAS RENT RECOVERY ACT, S. 11.

[17 Mad. 404

——, Misappropriation of, Suit for damages for.

See LIMITATION ACT, ART. 36.

[22 Calc. 877

——, Standing.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CROPS.

[21 Calc. 430

——, Suit for damages for, distrained.

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—DAMAGES.

[24 Calc. 163

——, Suit for value of.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[22 Calc. 501

CROSS-APPEAL.

——, Decree made in.

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

[19 All. 95
[L. R. 23 I. A. 167

——, Necessity of.

See PRIVY COUNCIL, PRACTICE OF—OBJECTIONS BY RESPONDENT.

[23 Calc. 922

CROSS-CLAIM.

—— in summary suit.

See COMPENSATION—CIVIL CASES.

[18 Bom. 717

CROSS-CLAIM—*concluded.*

—— under same decree.

See SET-OFF—CROSS DECREES.

[16 All. 395

CROSS-DECREES.

See SET-OFF—CROSS DECREES.

[16 All. 395

CROSS-EXAMINATION.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[21 Calc. 401, 642
[24 Calc. 288

——, Right of, and opportunity for.

See COMMISSION—CRIMINAL CASES.

[19 Bom. 749

CRUELTY, PROOF OF.

See DIVORCE ACT.

[22 Calc. 544

CRUELTY TO ANIMALS.

See PREVENTION OF CRUELTY TO ANIMALS ACT.

[24 Calc. 881

CULPABLE HOMICIDE.

See VERDICT OF JURY—GENERAL CASES.

[20 Bom. 215

1.—*Culpable homicide not amounting to murder—Penal Code (Act XLV of 1860), s. 304—Act done with the knowledge that death would be a probable result.*] Where the prisoner by gripping and squeezing the testicles of deceased reduced them to a pulpy condition, thereby causing an injury which resulted in death due to the shock so inflicted on the nervous system:—*Held, per* DAVIES, J., that the death was an unforeseen result for which prisoner could not be held liable, and that she ought to be convicted under s. 323, Penal Code:—*Held, per* SUBRAMANIA AYYAR and BENSON, JJ., that death was a probable consequence of the prisoner's act, and that she was guilty under s. 304, Penal Code, of culpable homicide not amounting to murder. QUEEN-EMPRESS *v.* KALIYANI.

[19 Mad. 356

2.—*Penal Code (Act XLV of 1860), s. 304—Culpable homicide not amounting to murder—Grave and sudden provocation.*] A person accused of murder under s. 302 of the Penal Code pleaded in defence that he had found his sister having illicit connection with a man named Thakuri, and had in a fit of passion killed them both on the spot. The statement being accepted was *held* to be a good plea of grave and sudden provocation so as to reduce the offence to one of culpable homicide not amounting to murder. QUEEN-EMPRESS *v.* CHUNNI.

[18 All. 497

CURATOR UNDER ACT XIX OF 1841.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[20 Bom. 437

CUSTODY OF CHILD.

—Parent's or guardian's right to custody of infant—" Habeas Corpus"—Criminal Procedure Code (1882), *s.* 491.] In Courts of Equity a discretionary power has always been exercised to control the father's or guardian's legal rights of custody, *The Queen* v. *Gyngall*, L. R. 2 Q. B. (1893), Vol. II, 232, approved:—*Held*, that this was not a case in which the Court would, having due regard to the interests and well-being of the child in question, assist the parent in exercising his legal rights of custody. The modern equitable doctrine cited in Seton on Decrees, Vol. II, p. 814, approved. IN THE MATTER OF JOSHY ASSAM.

[23 Calc. 290

CUSTOM.

See CONVERTS.

[20 Bom. 53

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[18 All. 129

See EASEMENT.

[18 Mad. 320

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES.

[20 Bom. 53

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED—ONLY SON.

[19 Bom. 428

See CASES UNDER HINDU LAW—CUSTOM.
See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[20 Bom. 495

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENTS.

[17 Mad. 199

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[17 Mad. 316, 422

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—AFFILIATED SON.

[17 Mad. 48

See HINDU LAW—PARTITION—PROPERTY LIABLE TO PARTITION.

[20 Bom. 495

See JURISDICTION OF CIVIL COURT—CASTE.

[17 Mad. 222

CUSTOM—*continued.*

See LANDLORD AND TENANT—PROPERTY IN TREES, WOOD, &C.

[22 Calc. 742, 744 note, 746 note, 748 note, 751 note
[23 Calc. 854

See MAHOMEDAN LAW—CUSTOM.

[21 Calc. 149

See MAHOMEDAN LAW—ENDOWMENT.

[22 Calc. 324
[19 All. 211

See MALABAR LAW—PARTITION.

[17 Mad. 184

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[16 All. 40

See PRESCRIPTION—EASEMENTS—LAND.

[16 All. 178

See PRESCRIPTION — EASEMENTS — PRIVACY.

[16 All. 69

See PRESCRIPTION — EASEMENTS — RIGHTS CONCERNING WATER.

[20 Mad. 389

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[23 Calc. 179, 427
[24 Calc. 355

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.

[23 Calc. 179
[21 Bom. 110

See SUCCESSION ACT, S. 331.

[19 Bom. 783

——, Stipulation in accordance with.

See LEASE—CONSTRUCTION.

[17 Mad. 1

1.—*Customary right—Facts necessary to establish the existence of a customary right—Easement.*] The plaintiff sued for possession of a piece of land which, he alleged, formed part of the court-yard of his *kothi*, and for demolition of a *chabutra* thereon. The defendants denied the plaintiff's title, and alleged that they always used the *chabutra* as a sitting place, and that during the *Moharram* the *tazias* and *alums* were exhibited upon the *chabutra*, and a *takht* was placed upon it. The Court of first instance found that the defendants had a right to use the land in the manner claimed during the *Moharram*. The lower appellate Court on the question of the defendant's right to use the said land in the manner

CUSTOM—*concluded.*

claimed by them found as follows:—"That various *mirasis*, whose connexion with each other is not established, have within a period of twenty years or so placed *tazias* upon the land and sung there":—*Held*, that this finding of fact did not necessarily in law lead to the conclusion that there was a local custom by virtue of which the easement now claimed by the defendants was acquired. Where a local custom excluding or limiting the general rule of law is set up, a Court should not decide that it exists unless such Court is satisfied of its reasonableness, and its certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted, or by stealth, or by force, and that it had been openly enjoyed for such a length of time as suggests that originally, by agreement or otherwise, the usage had become a customary law of the place in respect of the persons and things which it concerned. KUAR SEN *v.* MAMMAN.

[17 All. 87

Reversing on appeal under the Letters Patent. MAMMAN *v.* KUAR SEN.

[16 All. 178

2.—*Usage imported as term of a contract—Practice on a particular estate.*] In order that the practice on a particular estate may be imported as a term of the contract into a contract in respect of land in that estate, it must be shown that the practice was known to the person whom it is sought to bind by it, and that he assented to its being a term of the contract; and when the person sought to be bound by the practice is an assignee for value of rights under that contract, it must also be shewn that he and all prior assignees (if any) for value knew that the practice was a term of the original contract. MANA VIKRAMA *v.* RAMA PATTER.

[20 Mad. 275

DACOITY.

1.—*Penal Code (Act XLV of 1860), ss. 395 and 396—Dacoity with murder—Facts necessary to constitute the offence.*] In order to support a conviction under s. 396 of the Penal Code, it is necessary to establish, not only that the person accused under that section was commiting dacoity conjointly with others, but it must be shown that the murder was committed in his presence. Hence where certain persons were shown to have been concerned in a dacoity in the course of which murder was committed, but it was not shown that they were in the house in which the dacoity was committed at the time the murder took place, and the evidence, if anything, pointed to a contrary conclusion, it was *held* that the accused could not properly be convicted under s. 396, but only under s. 395 of the Penal Code. QUEEN-EMPRESS *v.* UMRAO SINGH.

[16 All. 437

2.—*Penal Code (Act XLV of 1860), s. 396—Dacoity in the course of which murder is committed—Facts necessary to establish the offence.*] When in the commission of a dacoity murder is committed, it matters not whether the particular

DACOITY—*concluded.*

dacoit charged under s. 396 of Act XLV of 1860 was inside the house where the dacoity is committed or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity. *Queen-Empress v. Umrao Singh*, I. L. R. 16 All. 437, distinguished. QUEEN-EMPRESS *v.* TEJA.

[17 All. 86

DAMAGE.

——, Special.

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY.

[18 Bom. 693
[22 Calc. 551

——, Threatened.

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[24 Calc. 260

—— to premises let.

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET.

[17 Mad. 98

DAMAGES. *Col.*

1. Suits for Damages 313
2. Measure and Assessment of Damages 313

See BILL OF LADING.

[19 Mad. 169
[19 Bom. 639

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 33.

[18 Bom. 547
[19 Bom. 27

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[18 All. 12

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[21 Calc. 173
[18 Bom. 299
[24 Calc. 8
[L. R. 23 I. A. 119

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[21 Bom. 522

See DIVORCE ACT.

[20 Bom. 362

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &C.

[24 Calc. 672

DAMAGES—*continued.*

See HINDU LAW — MARRIAGE—BETROTHAL.
[21 Bom. 23

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.
[18 Bom. 702
[19 Bom. 764

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.
[19 All. 259

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.
[17 All. 511
[18 All. 316
[19 All. 39

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITION.
[20 Bom. 439

See MASTER AND SERVANT.
[23 Calc. 922

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR.
[18 Bom. 474

See SET-OFF—GENERAL CASES.
[21 Bom. 126

See SHIPPING LAW—COLLISION.
[24 Calc. 627
[L. R. 24 I. A. 129

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION — DAMAGES FOR BREACH OF CONTRACT.
[19 Mad. 304

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—DAMAGES.
[24 Calc. 163, 557

See VENDOR AND PURCHASER—BREACH OF COVENANT.
[21 Bom. 175

——, **Claim in nature of.**

See LIMITATION ACT, ART. 116.
[18 Mad. 257

——, **Measure of.**

See CONTRACT—BREACH OF CONTRACT.
[24 Calc. 124, 177
19 All. 535

DAMAGES—*continued.*

——, **Suit for.**

See BILL OF LADING.
[19 Bom. 639
[19 Mad. 169

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 2.
[21 Calc. 528

See CARRIERS ACT, S. 6.
[24 Calc. 786

See CIVIL PROCEDURE CODE, S. 257A.
[20 Mad. 369

See CIVIL PROCEDURE CODE, S. 424.
[24 Calc. 584

See COSTS—SPECIAL CASES—PAYMENT INTO COURT.
[21 Bom. 502

See COSTS — SPECIAL CASES — SUIT OR APPEAL ONLY PARTLY DECREED.
[18 Bom. 474

See JURISDICTION OF CIVIL COURT—CASTE.
[20 Bom. 784

See JURISDICTION OF CIVIL COURT—PROCESSION.
[24 Calc. 524

See KARNAM.
[20 Mad. 145

See LANDLORD AND TENANT—PROPERTY IN TREES, WOOD, &C.
[22 Calc. 742, 744 note, 746 note, 748 note, 751 note

See LIMITATION ACT, ART. 36.
[22 Calc. 877

See LIMITATION ACT, ART. 49.
[19 Mad. 80

See MALICIOUS PROSECUTION.
[18 Mad. 136

See ONUS OF PROOF—DAMAGES.
[19 Bom. 717

See OPIUM ACT, S. 9.
[24 Calc. 691

See POSSESSION—EVIDENCE OF TITLE.
[21 Calc. 244

See REGISTRATION ACT, S. 49.
[17 Mad. 456

DAMAGES—*continued.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.

[18 Mad. 28
[20 Bom. 283
[24 Calc. 557

See VENDOR AND PURCHASER—FRAUD.

[18 All. 322

——, Suit for possession and for.

See COURT-FEES ACT, s. 17.

[16 All. 401

(1) SUITS FOR DAMAGES.

1.—*Transfer of decree—Subsequent attachment in execution against transferror—Right to compensation.*] *A* transferred a decree to *B*, who recovered part of the amount due under it, and was prevented from recovering the rest by an attachment of the decree in execution proceedings against *A*:—*Held*, that *A* was liable to pay compensation to *B*. PUTHIANDI MAMMED *v.* AVALIL MOIDIN.

[20 Mad. 157

(2) MEASURE AND ASSESSMENT OF DAMAGES.

2.—*Breach of covenant for title—Vendor and purchaser—Mortgagor and mortgagee—Value of prospective profits.*] A purchaser evicted from his holding is entitled to recover from a vendor who has guaranteed his title the value of the land at the date of the eviction. Though in ordinary cases a mortgagee when deprived of his security can only recover his mortgage-money as the damages for breach of the covenant for quiet enjoyment, yet, where the mortgage-deed contains a covenant on the part of the mortgagor not to pay off the mortgage for a term of years, the mortgagee is entitled to damages for being deprived of a favourable and long-enduring investment. For the purpose of estimating such damages, the Court will value the prospective profits as a jury would. NAGARDAS SAUBHAGYADAS *v.* AHMEDKHAN.

[21 Bom. 175

3.—*Appropriation by vendor—Passing of property—Power of resale—Contract Act (IX of 1872), s. 107—Changing shape of claim—Amendment of plaint.*] The plaintiffs under several contracts with the defendant produced by manufacture goods answering to the description of the contracts and appropriated them to the several contracts. On notice of the production of the goods being given to the defendant, he directed the goods so appropriated to be marked and despatched for shipment according to certain instructions. The plaintiffs carried out these instructions, but the goods could not be shipped, as the vessels in which they were to be shipped were not available at their usual place:—*Held*, the ownership in the goods was transferred to the defendant, and the plaintiffs became entitled

DAMAGES—*continued.*

(2) MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

under s. 107 of the Contract Act, after due notice, to resell them on the defendant's refusal to take delivery and to recover as damages the difference between the contract price of the goods and the price at which they were resold. *Semble*—The proper course to be adopted, when it is sought to shape a claim for damages differently from what appears in the plaint, is to amend the plaint and add a claim for damages on the basis of that amendment. Then at the trial, evidence may be given in support of the amended statement. But that course ought not to be allowed to be adopted after the plaintiffs have once closed their case, and the defendants have been called on to meet the claim as originally framed in the plaint. *Yule & Co.* v. *Mahomed Hossain*, I. L. R. 24 Calc. 124, followed. CLIVE JUTE MILLS Co. *v.* EBRAHIM ARAB.

[24 Calc. 177

YULE & CO. *v.* MAHOMED HOSSAIN.

[24 Calc. 124

4.—*Measure of damages on breach of contract by purchaser—Power of resale—Contract Act (IX of 1879), s. 107—Right of resale to be exercised within a reasonable time of the breach of contract—Measure of damages.*] In the case of a sale, if the purchaser does not perform his part of the contract, he is liable in damages to the seller, the measure of damages being the difference between the contract price and the price which the seller could have obtained for the article at the time of the breach of contract. If a vendor, on breach of contract by non-payment of the purchase-money, elects to exercise the right of resale given to him by s. 107 of the Indian Contract Act, 1872, not only is the vendor bound to wait a reasonable time after giving notice to the vendee of his intention to resell before actually reselling, but he is also bound to exercise his right of resale within a reasonable time after the date of the breach. PRAG NARAIN *v.* MUL CHAND.

[19 All. 535

5.—*Principal and agent—Consignment of goods for sale—Unauthorised sale by agent below limit.*] The measure of damages, in a case where an agent has in breach of his duty sold goods of his principal below the limit placed upon them by the principal, is the loss which the principal has sustained, and if he has sustained no loss, he can only ask for nominal damages. MANCHUBHAI NAVALCHAND *v.* TOD.

[20 Bom. 633

6.—*Contract consisting of distinct contracts with separate parties—Misjoinder of parties as defendants—Grant of relief not prayed for—Liquidated rate of damages applicable to certain specified breaches of contract only—Form of decree—Costs.*] Seven salt manufacturers, the defendants, contracted with *A* to manufacture and store in the factory in the name of and for the benefit of *A* such quantities of salt as he might require them to manufacture each season for seven years, in consideration

DAMAGES—*concluded.*

(2) MEASURE AND ASSESSMENT OF DAMAGES—*concluded.*

of *A's* paying them at the rate of Rs. 11-8-0 per *garce* of salt, four months' credit after each delivery being allowed to *A*, and of his paying Government taxes and dues, and executing all but petty repairs in the defendants' factory. *B* was a party with *A* to the contract though he was not expressly mentioned therein. *A* assigned his share in the contract to *C*. *B*, as first plaintiff, and *C*, as second plaintiff, brought a suit against the defendants alleging that the defendants had failed to fulfil their part of the contract during the second year of its continuance (1886), and praying (1) that all the defendants be directed to deliver to the plaintiffs the salt collected during 1886; (2) that defendants 2, 4 and 7 should be held liable for any damages plaintiffs might suffer through a fall in the price of salt. The Court of first instance, having held that the contract contained seven separate and distinct contracts, each defendant having contracted with reference to his own pans only, decreed (1) that the seven defendants should pay damages at the rate of Rs. 5-12-0 per *garce* for the salt collected by each during the years 1886 to 1889, leaving the quantity to be ascertained in the execution of the decree; (2) that the defendants should pay the plaintiffs' costs. On appeal, the District Judge modified the decree by fixing the rate of damages at Rs. 45-10-0 for each *garce* of salt:—*Held*, on appeal, that the suit was bad for misjoinder, since the case of each defendant, as a party to a distinct contract, should be decided on its own merits; that the decrees of the Lower Courts were bad in making all the defendants jointly and severally liable for costs, and for damages for other years than the year 1886, and in not ascertaining the amount of damages payable by each defendant; that the measure of damages was what the plaintiffs had lost by the breach of contract, but that the Lower Appellate Court was wrong in applying the rate fixed on this principle to each defendant without ascertaining the particular nature of the breach of which each defendant was guilty. NAMASIVAYA GURUKKAL *v.* KADIR AMMAL.

[17 Mad. 168

DAMDUPAT, RULE OF.

See CASES UNDER HINDU LAW—USURY.

DANCING GIRL.

See HINDU LAW—CUSTOM—ADOPTION.

[19 Mad. 127

DAUGHTER.

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.

[22 Calc. 347

DEBATE ON BILL IN LEGISLATIVE COUNCIL.

See STATUTES, CONSTRUCTION OF.

[18 Bom. 133

DEBT.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[18 Mad. 457
[19 Bom. 338
[17 All. 578
[20 Mad. 232

——, Ackowledgment of.

See DEBTOR AND CREDITOR.

[22 Calc. 434
[L. R. 22 I. A. 68

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.

[18 Bom. 614
[21 Bom. 201

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[17 Mad. 221
[18 Mad. 456
[20 Bom. 61

See CASES UNDER LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.

See LIMITATION ACT, S. 20.

[18 Mad. 456

See STAMP ACT, S. 3, CL. 4.

[22 Calc. 757

——, Assignment of.

See REGISTRATION ACT, S. 18.

[18 Mad. 454

See TRANSFER OF PROPERTY ACT, S. 132.

[21 Bom. 60

—— barred by limitation.

See COLLECTOR.

[19 Mad. 255

See CONTRACT ACT, S. 25.

[19 Mad. 255

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—WHAT CONSTITUTES LEGAL NECESSITY.

[21 Calc. 190

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

[18 Bom. 755

——, Evidence of payment on account of.

See LIMITATION ACT, S. 20.

[17 Mad. 92

DEBT—*concluded.*

——, Joint.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

[20 Bom. 615
[18 All. 106
[19 All. 462

See DEBTOR AND CREDITOR.

[20 Mad. 461

——, Nature of.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[20 Bom. 534

—— not barred by limitation.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[17 Mad. 221

——, Uncertainty of recovering.

See COURT-FEES ACT, SCH. I, ART. 11.

[24 Calc. 567

DEBTOR.

——, Assignment by.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[23 Calc. 592

——, Notice to.

See TRANSFER OF PROPERTY ACT, S. 132.

[21 Bom. 60

——, Removal of property of, by creditor.

See THEFT.

[22 Calc. 669, 1017
[18 All. 88

——, Suit against estate of.

See REPRESENTATIVE OF DECEASED PERSON.

[22 Calc. 903

DEBTOR AND CREDITOR.

See FRAUD—ALLEGING OR PLEADING FRAUD.

[20 Mad. 326

See FRAUD—EFFECT OF FRAUD.

[18 Mad. 378
[20 Mad. 323

See HINDU LAW—USURY.

[18 Bom. 227

See LIMITATION ACT, S. 15.

[17 All. 198

See MAHOMEDAN LAW—DEBTS.

[19 Bom. 273

DEBTOR AND CREDITOR—*continued.*

See MULTIFARIOUSNESS.

[18 All. 432

See THEFT.

[22 Calc. 669, 1017
[18 All. 88

1.—*Creditors' trust deed—Assignment of all his property by debtor to trustees for payment of creditors—Right of suit by creditor who had signed as creditor and trustee to recover his debt notwithstanding the deed.*] On the 30th March, 1894, the plaintiff sued the defendant, who traded under the name of *V J*, to recover Rs. 7,705 due on an adjusted account. On the 17th April following, the suit was on the board for hearing, but by consent of parties was adjourned for three months. Later on the same day, the defendant executed a deed whereby he assigned all his property to the plaintiff and three other persons as trustees in trust for the payment of his creditors. The deed was executed by the plaintiff and the other trustees both as trustees and as creditors. It contained no release and no agreement by the creditors to take less than the full amount of their debts. It conveyed all the defendant's property to the trustees, who were to collect the estate and divide it rateably among the creditors "without prejudice to the rights of the several creditors to recover" the balance (if any) which might remain due to them after receiving such rateable distribution, and it declared that the said agreement for the payment of the debts was accepted by the creditors, and that, "upon payment to the said creditors, respectively, of the full or whole amount of their respective claims, these presents shall operate as fully and effectually as an order of discharge from the Insolvent Court in respect of the debts now due from the said debtor, or the said firm of *V J*, to the said creditors, respectively, and may be pleaded in bar to any claim in respect of such debts; and each of them, the said creditors for himself, his heirs, executors and administrators, doth hereby covenant with the said debtor, his heirs, executors and administrators, that he or they will not, if the said debtor shall pay the said full amount of the debts due by him or his said firm of *V J* to the said creditors, bring any action, suit or proceeding against them or any of them for or in respect of the debts now due from the said debtor or the said firm of *V J* to the said creditors respectively." On the execution of this deed, the trustees took possession of defendant's books of accounts, and proceeded to recover the defendant's estate. The three months for which, as abovementioned, the suit was adjourned in April, 1894, having now expired, it came on for hearing. The defendant pleaded the deed, and contended that the plaintiff having accepted the trust, and signed the deed, was not entitled to continue the suit against him:—*Held*, that it would be inequitable that the defendant having handed over all his property to four of his creditors as trustees with a view to the payment of his debts in full should be harassed by one of those creditors who had accepted the trust. The conduct of the plaintiff had been such as to deprive him of the right to present

DEBTOR AND CREDITOR—*continued.*

payment of his debt except by the assignment made to him and the other trustees. There had been a concluded agreement which precluded him from proceeding with his suit, and to allow him to proceed would be a fraud on the creditors. Under the circumstances, there was an implied condition that the creditors should not sue until their remedy under the assignment was exhausted. The creditors should get what they could under the assignment, and then proceed for the rest. GOKULDAS MUCCANJI *v.* VASSANJI JAIRAM.

[19 Bom. 12

2.—*Bond given after personal discharge in respect of debt incurred before insolvency—Private settlement with creditor without notice to Official Assignee and creditors—Agreement by creditor not to oppose final discharge—Admissibility of evidence—Untrue recital in bond.*] An agreement, by which an insolvent who has obtained his personal but not his final discharge, without notice to the Official Assignee or his other creditors, settles the claim of one creditor, and by which that creditor agrees not to oppose his final discharge, is void as in fraud of creditors and as inconsistent with the policy of the Insolvent Debtors' Act. In a suit on a bond containing such an agreement, evidence is admissible on behalf of the obligor to prove that a recital in it that all the other creditors has been settled with, was untrue. Though no creditor is bound to oppose the final discharge of an insolvent, yet a private agreement by a creditor with the insolvent, by which in consideration of a money payment the creditor binds himself not to oppose, is void as opposed to the policy of the Insolvent Debtors Act and as in fraud of creditors. NAOROJI NUSSERWANJI THOONTHI *v.* SIDICK MIRZA.

[20 Bom. 636

3.—*Composition-deed between debtors and creditors—Managing member of a firm appointed as trustee—Right of suit after dissolution of the firm.*] Certain traders having been adjudicated bankrupts in the Court of Mauritius, the creditors agreed to a composition-deed which was sanctioned by the Court, whereby the present plaintiff, therein described as the managing member of the firm of *S & Co.*, was appointed trustee, and his firm guaranteed the payment of a dividend of 50 per cent. The firm was subsequently dissolved, and its assets were assigned to a third party. The plaintiff now sued to recover costs decreed to him in his capacity as trustee in various suits in Mauritius, and it was objected that he was precluded from suing by the dissolution of his firm and the assignment away of its assets:—*Held*, that the plaintiff was entitled to maintain the suit. *Subbaraya* v. *Vythilinga*, I. L. R. 16 Mad. 85, referred to. SUBBARAYA PILLAI *v.* VAITHILINGAM.

[20 Mad. 91

4.—*Order giving mesne profits not awarded by decree—Bond, Construction of—Condition in a bond unfulfilled—Admission of debt—Abandonment of non-existent claim on compromise*] An order.

DEBTOR AND CREDITOR—*concluded.*

assumed to be made by a Court in execution, that decree-holders should have mesne profits which they had not been awarded in their decree, was without jurisdiction, and could not be regarded as taking effect. This order was afterwards reversed as having been made without jurisdiction, but was standing when the bond in suit was executed by the decree-holders, now defendants, admitting money to be due to the plaintiff, and, as to a particular sum, promising payment out of the mesne profits when realized by them. The decree-holders, afterwards compromising with their judgment-debtor, abandoned the claim to mesne profits. This, however, was no real concession, because the right to mesne profits had no existence. Although the unqualified admission of a debt implies a promise to pay it, yet this implication does not necessarily follow where there is an express promise to pay in a particular manner, and on a certain event happening:—*Held*, on the construction of the bond, that here the admission was referable to the particular obligation agreed to be discharged only in the manner stipulated; and that therefore the payment was to be contingent on there being mesne profits:—*Held*, also, that it had not been established that the non-occurrence of the condition had been occasioned by the conduct, or default, of the defendants, and that, therefore the objection to pay the sum in question never took effect, or became enforceable. KALKA SINGH *v.* PARAS RAM.

[22 Calc. 434
[L. R. 22 I. A. 68

5.—*Contract Act (IX of 1872), ss. 38, 42, 43 and 45—Joint promisee—Joint creditors—Discharge of mortgage by one of two joint mortgagees.*] The sum due upon a mortgage was paid to one of the two mortgagees, and he gave an acquittance without the knowledge of the other mortgagee, who now brought this suit upon the mortgage. It appeared that there was no fraud on the part of the mortgagors, and that the mortgagee who received payment was not the agent of the plaintiff in that behalf:—*Held*, that the mortgage had been discharged, and the plaintiff was not entitled to sue. *Wallace* v. *Kelsall*, 7 M. & W. 264, referred to. BARBER MARAN *v.* RAMANA GOUNDAN.

[20 Mad. 461

DEBTS.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS.

[16 All. 286

See HINDU LAW—DEBTS.

[19 All. 26

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

[20 Bom. 767

See MAHOMEDAN LAW—DEBTS.

[21 Calc. 311
[19 Bom. 273

DEBTS—*concluded.*

——, Liability of son for father's.

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &C.

[24 Calc. 672

See LIMITATION ACT, ART. 120.

[17 Mad. 122

——, Payment of husband's.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY.

[18 Mad. 113

——, Right to collect.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[20 Mad. 162
[L. R. 24 I. A. 73

DECEIT, ACTION FOR.

See COMPANY—POWERS, DUTIES AND LIABILITIES OF DIRECTORS.

[18 All. 56

DECLARATION OF EXECUTION OF POWER.

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION.

[22 Calc. 491

DECLARATORY DECREE.

See EXECUTION OF DECREE—MODE OF EXECUTION — DECLARATORY DECREES.

[21 Calc. 784

DECLARATORY DECREE, SUIT FOR.

		Col.
1.	Suits concerning Documents	... 322
2.	Enforcing or Removing Lien or Attachment	... 322
3.	Reversioners	... 323
4.	Declaration of Title	... 323

See HINDU LAW—MARRIAGE—BETROTHAL.

[21 Bom. 23

See HINDU LAW—REVERSIONERS—ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS.

[22 Calc. 354

See HINDU LAW — REVERSIONERS — POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

[18 Mad. 53

DECLARATORY DECREE, SUIT FOR —*continued.*

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

[24 Calc. 107

See LIMITATION ACT. ART. 144—IMMOVEABLE PROPERTY.

[19 Bom. 43

See MADRAS LAND REVENUE ASSESSMENT ACT.

[19 Mad. 292

See VALUATION OF SUIT—APPEALS.

[18 Bom. 100
[23 Calc. 645

See VALUATION OF SUIT—SUITS.

[16 All. 303
[19 All. 60
[20 Bom. 736

(1) SUITS CONCERNING DOCUMENTS.

1.—*Specific Relief Act (I of 1877) s. 42—Consequential relief—Suit by a member of a tarwad for a decree declaratory of the invalidity of a kanom granted to other members by the karnavan of the tarwad—Attornment of tenants—Possession, Transfer of.*] Where a *kanom* of *tarwad* property is granted by the *karnavan* to members of the *tarwad*, and the property in question remains in the possession of the *karnavan* on behalf of the *tarwad*, all that is necessary for a junior member to do in order to prevent the possession becoming adverse to the *tarwad* is to obtain a declaration that the *kanom* which is relied on as the cause of adverse possession is invalid. But if the *kanom* is granted to a stranger to the family, who is in possession, possession must then be sought for as relief consequent on the declaration. An attornment of tenants to the *kanomdars* does not operate as a transfer of possession from the *tarwad* to the *kanomdars*. *Subramanyan* v. *Paramaswaran* I. L. R. 11 Mad. 116, followed; and *Bikutti* v. *Kalendan*, I. L. R. 14 Mad. 267; *Abdulkadar* v. *Mahomed*, I. L. R. 15 Mad. 15; and *Narayana* v. *Shankunni*, I. L. R. 15 Mad. 255, distinguished. PADAMMAH *v.* THEMANA AMMAH.

[17 Mad 232

(2) ENFORCING OR REMOVING LIEN OR ATTACHMENT.

2.—*Specific Relief Act (I of 1877), s. 42—Civil Procedure Code (1882), s. 283—Suit to declare attachment subsisted and that there had been no termination of attachment by abandonment.*] The plaintiff had an attachment against certain property. Owing to his not filing a necessary affidavit, the execution petition was struck off. Subsequently he aplied for the sale of the property, and the Court directed a fresh attachment to issue. The defendant then came forward and alleged that he had purchased the property prior to the second attachment, and he obtained an order

DECLARATORY DECREE, SUIT FOR —*continued.*

(2) ENFORCING OR REMOVING LIEN OR ATTACHMENT—*concluded.*

in his favour:—*Held*, in a suit brought under s. 283 of the Civil Procedure Code to enforce the first attachment and to have it declared that it was subsisting at the time of the defendant's purchase, that the suit for a declaratory decree was maintainable, and that the facts did not amount to an abandonment of the first attachment by the plaintiff. SRINIVASA SASTRIAL *v.* SAMI RAU.

[17 Mad. 180

(3) REVERSIONERS.

3.—*Suit by remote reversioners—Suit for declaration that defendant not the adopted son—Consequential relief—Specific Relief Act (I of 1877), s. 42.*] A suit by persons who are merely distant relations and not reversionary heirs for a declaration that the defendant is not the adopted son, is not maintainable under s. 42 of the Specific Relief Act (I of 1877). Every declaratory decree must be ancillary to some consequential relief obtainable thereby, and no such relief is possible in the case of distant and contingent, and not presumptive, reversionary heirs. ANYABA *v.* DAJI.

[20 Bom. 202

(4) DECLARATION OF TITLE.

4.—*Specific Relief Act (I of 1877), s. 42—Civil Procedure Code (1882), s. 319—Constructive possession.*] In a suit for declaration of the plaintiff's title to certain land, no prayer for possession was contained in the plaint. It appeared that the land in question had been given to the plaintiff by his father, and had subsequently been attached and brought to sale in execution of a decree against the plaintiff's father and had been purchased by the defendants who were put into constructive possession under the Civil Procedure Code, s. 339, the land being in the actual possession of tenants:—*Held*, that the suit for a declaration merely was not maintainable under the Specific Relief Act, s. 42. KRISHNABHUPATI DEVU *v.* RAMAMURTI PANTULU.

[18 Mad. 405

5.—*Suit by person in possession for declaration of title—Burden of proof—Failure of plaintiff or defendant to prove title—Effect of plaintiff's possession—Specific Relief Act (I of 1877), s. 42.*] The plaintiff who was in possession of certain land sued for a declaration that the defendant had no title to it, and that it belonged to him. The plaint also contained a prayer for general relief. At the trial, both plaintiff and defendant failed to prove any title to the land, but the plaintiff proved that he had been for ten years in possession and had built a shed on it:—*Held*, that no declaration of the plaintiff's title could be made; but *held*, on the authority of *Ismail Ariff* v. *Mahomed Ghouse*, I. L. R. 20 Calc. 834; L. R. 20 I. A. 99, that the plaintiff was lawfully entitled to the land and to the shed thereon. GANGARAM CHIMNA PATEL *v.* SECRETARY OF STATE FOR INDIA.

[20 Bom. 798

DECLARATORY DECREE, SUIT FOR —*continued.*

(4) DECLARATION OF TITLE—*continued.*

6.—*Specific Relief Act (I of 1877), s. 42—Consequential relief.*] At a sale in execution of a decree against the plaintiffs, the pleader who had acted for the plaintiffs purchased their property with his own money, but in the name of his *mohurrir*, and for a very inadequate sum. The plaintiffs thereupon brought a suit against the defendants (the pleader and his *mohurrir*) for a declaration that the pleader-defendant, in so purchasing, was a trustee on their behalf, for an order directing the defendants to reconvey the property to the plaintiffs, and for other relief. At the time of filing the suit, possession of the land sold had not been given to anybody:—*Held*, that s. 42 of the Specific Relief Act (I of 1877) was no bar to the suit as being one merely for a declaratory decree without consequential relief. AGHORE NATH CHUCKERBUTTY *v.* RAM CHURN CHUCKERBUTTY.

[23 Calc. 805

7.—*Specific Relief Act (I of 1877), s. 42—Suit for a declaration that plaintiff's interests are not affected by sale in execution of decree—Further relief.*] The plaintiffs were purchasers at a sale held in execution of a decree for money, and had obtained possession. Before that decree had been executed the property in question was mortgaged to two other persons. After the purchase by the plaintiffs, the mortgagees, with knowledge of the auction-purchaser's rights, brought a suit for sale upon their mortgage without making the former auction-purchasers parties. They obtained a decree, and brought the mortgaged property to sale, and it was purchased by *N S* and another. The former auction-purchasers thereupon sued the purchasers under the decree upon the mortgage for a declaration that they and their interests were not affected by the suit for sale and by the decree for sale and the sale in execution of that decree:—*Held*, the plaintiffs in that suit were not bound either to tender the mortgage-money, or to offer to redeem, or to frame their suit as a suit for redemption, and that their not having done so did not deprive them of their right to a declaration. *Bhawani Prasad* v. *Kallu*, I. L. R. 17 All. 537, referred to. NATHU SINGH *v.* GUMANI SINGH.

[18 All. 320

8.—*Specific Relief Act (I of 1877), s. 42—Right to sue for declaration—Mortgage—Code of Civil Procedure (1882), s. 287.*] *D* mortgaged certain property to plaintiff. After *D's* death, plaintiff obtained a decree for recovery of his debt by sale of the mortgaged property. Before the property was advertised for sale, the defendants, who were *D's* brothers, objected under s. 287 of the Code of Civil Procedure (Act XIV of 1882), alleging that *D* was not the sole owner of the property; that they were joint owners with him; that they had set aside the property for religious purposes; and that *D* had no right to mortgage it. The Court executing the decree thereupon ordered that the applicants' (defendants') claim should be notified in the proclamation of sale. Plaintiff then

DECLARATORY DECREE, SUIT FOR
—concluded.

(4) DECLARATION OF TITLE—*concluded.*

filed a suit against the defendants, praying for a declaration that the property belonged to *D* exclusively, and the defendants had no right or interest in it:—*Held* that, under s. 42 of the Specific Relief Act (I of 1877), the plaintiff was entitled to the declaration prayed for. Plaintiff having himself purchased the property after this claim for declaration had been allowed by the Subordinate Judge, it was contended that he was not entitled any longer to a declaratory decree:—*Held*, that the change of circumstances brought about by the plaintiff himself purchasing the property did not take away the right to sue which had already accrued to him. *Govinda* v. *Perumdevi*, I. L. R. 12 Mad. 136, referred to. WAMANRAO DAMODAR v. RUSTOMJI EDALJI.

[21 Bom. 701

DECREE.

	Col.
1. Form of Decree	... 331
(*a*) General Cases	... 331
(*b*) Account	... 331
(*c*) Maintenance	... 331
(*d*) Mortgage	... 332
(*e*) Partition	... 336
(*f*) Possession	... 336
2. Construction of Decree	... 338
(*a*) General Cases	... 338
(*b*) Endowment	... 338
(*c*) Mesne Profits	... 339
(*d*) Mortgage	... 339
3. Alteration or Amendment of Decree.	340

See CASES UNDER APPEAL—DECREES.

See COURT-FEES ACT, SCH. II, ART. 11.

[17 All. 238

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 475

——, Adjustment or satisfaction of.

See APPEAL—DECREES.

[16 All. 129
[18 Mad. 26

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[21 Calc. 437
[18 Bom. 327
[18 Mad. 26
[19 Mad. 230

See CIVIL PROCEDURE CODE, S. 257A.

[17 Mad. 382
[21 Bom. 808

See CASES UNDER CIVIL PROCEDURE CODE, S. 258.

See RECEIVER.

[17 Mad. 501
[20 Mad. 224

DECREE—*continued.*

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREE SATISFIED BEFORE SALE.

[16 All. 5
[21 Bom. 463

——, Amendment or alteration of.

See APPEAL—DISMISSAL OF APPEAL.

[21 Bom. 548
[24 Calc. 759

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

[22 Calc. 1011
[L. R. 22 I. A. 203

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 15B.

[19 Bom. 318

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

[22 Calc. 960

See LIMITATION ACT, ART. 178.

[21 Calc. 259
[17 All. 39

See PAUPER SUIT—APPEALS.

[18 Bom. 454

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—ALTERING, SETTING ASIDE, OR REVERSING DECREE.

[19 Mad. 96

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 454

——, Assignment of.

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[16 All. 483

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[16 All. 133

See CIVIL PROCEDURE CODE, S. 232.

[19 Mad. 306

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[19 Mad. 230

See CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUITS.

[16 All. 483
[17 All. 222

DECREE—*continued.*

See CIVIL PROCEDURE CODE, S. 258.
[19 Mad. 230

See COSTS— SPECIAL CASES—RESPONDENTS.
[20 Bom. 167

See DAMAGES—SUITS FOR DAMAGES.
[20 Mad. 157

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.
[18 All. 86

See REGISTRATION ACT, S. 17.
[23 Calc. 450

——, Barred by limitation.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.
[24 Calc. 473

See LIMITATION ACT, ART. 122.
[24 Calc. 473

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.
[19 All. 202

See RES JUDICATA—CAUSE OF ACTION.
[19 All. 202

——, Compromise of.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.
[19 Bom. 546

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.
[19 Bom. 546

——, Consent decree.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.
[23 Calc. 639

See EXECUTOR.
[21 Bom. 400

See MINOR—REPRESENTATION OF MINOR IN SUITS.
[23 Calc. 934

See RES JUDICATA—ADJUDICATIONS.
[24 Calc. 216

See TRANSFER OF PROPERTY ACT, S. 67.
[22 Calc. 859

——, Construction of.

See FOREST ACT, S. 45.
[24 Calc. 504

DECREE—*continued.*

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.
[19 Mad. 54

——, Copy of.

See PRACTICE—CIVIL CASES—APPEAL.
[16 All. 77

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION.
[17 All. 213

——, Effect of not executing.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.
[21 Calc. 255

——, Ex-parte.

See BENGAL TENANCY ACT, SCH. III, ART. 6.
[21 Calc. 387

See CIVIL PROCEDURE CODE, S. 102.
[23 Calc. 991

See CASES UNDER CIVIL PROCEDURE CODE, S. 108.

See LIMITATION ACT, S. 5.
[23 Calc. 325

See PLEADER—APPOINTMENT AND APPEARANCE.
[20 Bom. 293

——, Ex-parte, Order setting aside.

See APPEAL—DEFAULT IN APPEARANCE.
[19 All. 355

See APPEAL—ORDERS.
[22 Calc. 981

——, Ex-parte, Suit to set aside.

See RES JUDICATA—RELIEF NOT GRANTED.
[24 Calc. 546

See RIGHT OF SUIT—FRAUD.
[24 Calc. 546

——, Form of.

See COMPROMISE—COMPROMISE UNDER CIVIL PROCEDURE CODE.
[18 Mad. 410

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.
[17 Mad. 168

See DEPOSIT OF TITLE DEEDS.
[24 Calc. 348

See ENCROACHMENT.
[20 Bom. 298

DECREE —*continued.*

See EVIDENCE — PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.
[24 Calc 20

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.
[19 Mad. 211

See HINDU LAW—MAINTENANCE—FORM OF ALLOWANCE AND CALCULATION OF AMOUNT.
[21 Bom. 747

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.
[19 Bom. 764

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.
[24 Calc. 766

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.
[24 Calc. 107

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
[18 Bom. 107

See LANDLORD AND TENANT—TRANSFER BY TENANT.
[24 Calc. 152

See LIMITATION ACT, ART. 120.
[17 Mad. 122

See MESNE PROFITS — ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.
[19 All. 155

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[18 Mad. 500

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[22 Calc. 33
[18 All. 83

See PARTIES — PARTIES TO SUITS—OFFICIAL ASSIGNEE.
[22 Calc. 259

See REGISTRATION ACT, s. 18.
[24 Calc. 20

See REVIEW—POWER TO REVIEW.
[19 Bom. 571

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.
[19 Bom. 546

DECREE —*continued.*

See TRANSFER OF PROPERTY ACT, s. 67.
[24 Calc. 677

See VARIANCE BETWEEN PLEADING AND PROOF.
[18 Mad. 462
[24 Calc. 433

—— **"in absentem."**

See FOREIGN COURT, JUDGMENT OF.
[18 Mad. 327

—— **incapable of execution.**

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.
[18 Bom. 495

See LIMITATION ACT, ART. 178.
[17 All. 39

—— **in former suit.**

See CASES UNDER EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS.

See CASES UNDER RES JUDICATA.

——, **Meaning of.**

See JURIDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[16 All. 496

——, **Payable by instalments.**

See CIVIL PROCEDURE CODE, s. 258.
[21 Calc. 542

See LIMITATION ACT, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.
[21 Calc. 542
[16 All. 371
[19 Mad. 162

See TRANSFER OF PROPERTY ACT, s. 67.
[22 Calc. 859

——, **Reversal of.**

See MONEY PAID UNDER DECREE.
[17 Mad. 82

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.
[17 Mad. 251

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—ALTERING, SETTING ASIDE, OR REVERSING, DECREE.
[19 Mad. 96

DECREE—*continued.*

——, Suit to set aside.

See FRAUD—EFFECT OF FRAUD.

[18 Mad. 378

See RIGHT OF SUIT—FRAUD.

[21 Calc. 605, 612

——, Transfer of, for execution.

See CASES UNDER EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &C.

(1) FORM OF DECREE.

(*a*) GENERAL CASES.

1.—*Insufficient payment of Court-fees, Procedure to be adopted on—Appellate Court, Power of.*] In a suit for specific performance of a contract for the sale of land and for possession, the plaintiff did not pay the full Court-fees, but the Munsif heard the suit and dismissed it. An appeal by the plaintiff was entertained by the Subordinate Judge who passed a decree for specific performance, and decreed that if the deficient Court-fees were paid, possession should be given to the plaintiff, but that, on failure to pay the Court-fees, the claim for possession should be dismissed:—*Held*, that, the plaintiff not having in the first instance paid the full Court-fees, he should have been called upon by the Munsif to do so. As this was not done, the Court of first appeal was not in error in entertaining the appeal which was preferred by the plaintiff; but he should have passed no decree until the fees due had been paid, and if they were not paid, the decree should have been for the dismissal of the whole suit. KRISHNASAMI *v.* SUNDARAPPAYYAR.

[18 Mad. 415

(*b*) ACCOUNT.

2.—*Decree for account of dissolved partnership—Civil Procedure Code* (1882), *s.* 215—*Procedure—Onus of proof—Taking of accounts.*] In a suit for an account of a dissolved partnership, a decree should be passed under the Civil Procedure Code, s. 215, in accordance with Form No. 132 in Sch. IV; and it should direct an account to be taken of the dealings and transactions between the parties, and of the credits, property and effects due and belonging to the late partnership, and it should direct the appointment of a receiver of the outstanding debts and effects. Observations on the procedure to be adopted and the burden of proof on the taking of the account. THIRUKUMARESAN CHETTI *v.* SUBBARAYA CHETTI.

[20 Mad. 313

(*c*) MAINTENANCE.

3.—*Suit by heir to recover family property from widow—Provision for widow.*] The Court will not allow the heir to recover family property from a widow entitled to be maintained out of it without first securing a proper maintenance for her. *Jamnabai* v. *Raychand Nahalchand*, I. L. R. 7 Bom. 225, followed. YELLAWA *v.* BHIMANGAVDA.

[18 Bom. 452

DECREE—*continued.*

(1) FORM OF DECREE—*continued.*

(*c*) MAINTENANCE—*concluded.*

4.—*Maintenance. Mother's right to—Right to possession in virtue of claim to maintenance—Mortgagee's right to possession subject to mother's claim to maintenance.*] After the death of *S*, who had mortgaged certain land belonging to him, his widow (defendant No. 2) mortgaged it again in consideration of the existing mortgage debt and a further advance. The mortgage was afterwards assigned to the plaintiff, who sued the widow (defendant No. 2) and the mother (defendant No. 1) of *S* for possession. The mother (defendant No. 1) contended that any right the widow (defendant No. 2) had to mortgage the property was subject to her (the first defendant's) right to maintenance out of it, and, as her maintenance, she claimed to remain in possession. The lower Court held that the property should not be given to the plaintiff until a proper arrangement had been made by him for the maintenance of defendant No. 1, but stated that it imposed that condition on the supposition that there was no other family property out of which she could be maintained:—*Held*, that the decree was wrong in making the right of the first defendant to remain in possession dependent on there being no other property. Further, that as the mortgagees lent their money with full knowledge of the first defendant's possession in virtue of her claim to maintenance, the first defendant ought not to be compelled to accept from the plaintiff maintenance in some other form. RACHAWA *v.* SHIVAYOGAPA.

[18 Bom. 679

(*d*) MORTGAGE.

5.—*Suit by puisne incumbrancer—Decree for sale.*] In March, 1881, *A* purchased certain land and, in the same month, mortgaged it to *B*. In June, the land was attached in execution of a decree. In August, *A* discharged the judgment-debt with money borrowed from *C*, and he hypothecated the land to him to secure repayment of the loan. In 1882, *B* brought a suit on his mortgage and obtained a decree, in execution of which the land was brought to sale and purchased by him: *C* was not a party to this suit. In 1886, *B* sold the land to *D* under an instrument, which recited that out of the purchase-money Rs. 760 were retained by the purchaser for payment of prior incumbrances, and the finding was that the purchaser undertook to pay the debt owing to *C*. *C* now sued *A* and *D* to enforce his hypothecation:—*Held*, that *C* was entitled to a decree for sale. NARAYANASAMI NAIDU *v.* NARAYANA RAU.

[17 Mad. 62

6.—*Suit on mortgage for an account and for sale of mortgaged property—Practice—Decree where puisne mortgagee is a party defendant and asks for an account on the footing of his mortgage—Application to vary decree.*] In a suit on a mortgage, for an account, and for sale of the mortgaged property, where a puisne mortgagee who is made a defendant appears and proves his mortgage and asks that the decree sought to be obtained by the

DECREE—*continued.*

(1) FORM OF DECREE—*continued.*

(*d*) MORTGAGE—*continued.*

plaintiff may also provide for an account on the footing of his mortgage, and for payment of the amount found due to him out of the sale-proceeds, the practice of the Court is, where no issue is raised as between the defendants, and no question of priority arises, on proof of the subsequent mortgage, to make a decree directing an account on the footing of each of the mortgages, and fixing one period of redemption for all the defendants: *Auhindro Bhoosun Chatterjee* v. *Chunnoo Lall Johurry*, I. L. R. 5 Calc. 101, referred to. An application made by the purchaser of the equity of redemption, who had been made a defendant in such a suit and had been served with a summons but had failed to appear, that the decree which had been made in accordance with the above practice, should be varied by limiting it to a decree in favour of the plaintiff alone, on the ground that the Court had no jurisdiction in such a suit to make a decree between co-defendants, was dismissed. KISSORY MOHUN ROY *v.* KALLY CHURN GHOSE.

[22 Calc. 100

7.—*Suit by second mortgagees against purchaser of equity of redemption who had paid off a prior mortgage—Suit ignoring lien of purchaser of equity of redemption.*] One *A S* purchased the equity of redemption of a property subject to two mortgages, and as part of the transaction paid off the prior mortgage. The mortgagees under the second mortgage sued to bring the mortgaged property to sale making the original mortgagor and the purchaser of the equity of redemption defendants, but omitting any mention of the lien acquired by such purchaser:—*Held*, that such omission was not a valid reason for dismissing the plaintiff's suit altogether. *Salig Ram* v. *Harcharan Lal*, I. L. R. 12 All. 548, distinguished. KALI CHARAN *v.* AHMAD SHAH KHAN.

[17 All. 43

8.—*Decree for redemption allowed in suit for ejectment—Discretion of Court.*] A Court can in its discretion pass a decree for redemption in a case in which the plaintiffs have sued in ejectment. *Nilakant Banerjee* v. *Suresh Chunder Mullick*, I. L. R. 12 Calc. 414; L. R. 12 I. A. 171, referred to and followed. PARSHOTAM BHAISHANKAR *v.* RUMAL ZUNJAR.

[20 Bom. 196

9.—*Gujarat Talukdars Act (Bombay Act VI of 1888), ss. 31 and 32—Mortgage of talukdari estate—Validity of mortgage before the Act—Decree upon the mortgage for sale of talukdari estate—Sanction of Government to sale.*] A *talukdar* of the Ahmedabad district mortgaged his *talukdari* property in 1886. In 1892, the mortgagee sued to enforce his lien by sale of the mortgaged property. The Court passed a decree against the *talukdar* personally, holding that it had no power under ss. 31 and 32 of the Gujarat Talukdars Act to direct a sale of the *talukdari* estate:—*Held*, reversing the decree, that the mortgage having been effected

DECREE—*continued.*

(1) FORM OF DECREE—*continued.*

(*d*) MORTGAGE—*continued.*

prior to the coming into force of the Gujarat Talukdars Act was not invalidated by cl. 1 of s. 31 of the Act, and that the Court was bound to pass a decree for sale in default of payment of the mortgage-debt. *Quære*—Whether the property could be sold without the sanction of the Governor in Council, regard being had to the provisions of cl. 2 of s. 31 of the Act. *Nagar Pragi* v. *Jivabai*, I. L. R. 19 Bom. 80, doubted. DOSHI FULCHAND *v.* MALEK DAJIRAJ.

[20 Bom. 565

10.—*Suit for sale of mortgaged property without redeeming prior mortgage—Transfer of Property Act (IV of 1882), s. 96.*] In a suit on a mortgage by a subsequent mortgagee who made prior mortgagees parties thereto, and in which the plaintiff prayed that the amount due to him might be realized by a sale of the mortgaged property, the lower Court decreed the suit, but required the plaintiff, before bringing the property to sale, to redeem certain prior mortgages:—*Held*, on appeal, that although, on the authority of the case of *Kantiram* v. *Kutubuddin Mahomed*, I. L. R. 22 Calc. 33, the plaintiff would be entitled to a decree giving him leave to sell the property subject to the prior incumbrances, yet, having regard to the difficulty and complication that would arise under such decree by reason of the fact that one of the defendants, who had purchased the equity of redemption and certain prior mortgages, had obtained upon two of them decrees against the plaintiff, the decree passed by the lower Court was equitable and proper. BENI MADHUB MOHAPATRA *v.* SOURENDRA MOHUN TAGORE.

[23 Calc. 795

11.—*Mortgage sued on inadmissible in evidence for want of registration—Secondary evidence—Mortgage effecting consolidation of prior mortgages—Decree to redeem prior mortgages.*] In a suit to redeem a mortgage of 1867 which had been lost and admittedly had not been registered, it appeared that it had been executed in consolidation of two prior mortgages, dated 1856 and 1860, respectively:—*Held*, that the plaintiff was not entitled to a decree on the footing of the unregistered mortgage which could not be proved, but that he was entitled to redeem the two previous mortgages if they were found to be genuine and valid. ARUMUGAM PILLAI *v.* PERIASAMI.

[19 Mad. 160

See KRISHNA PILLAI *v.* RANGASAMI PILLAI.

[18 Mad. 462

12.—*Mortgage by mortgagee of his rights as such, but without assignment—Rights of sub-mortgagee as against original mortgagee.*] *R*, and others, mortgaged certain immoveable property to *N K*. *N K* made a sub-mortgage to *C L* purporting to mortgage to him his rights as mortgagee, but

DECREE—*continued.*

(1) FORM OF DECREE—*continued.*

(*d*) MORTGAGE—*continued.*

without assigning his mortgage to *C L*. Upon this title *C L* sued for sale of the property mortgaged by *R* and others to *N K*:—*Held*, that *C L* was not entitled to bring the property mortgaged to *N K* to sale, but at most to obtain a decree for money against *N K*, in execution of which he might possibly have attached, if it had not been paid off, the mortgage held by *N K*. GANGA PRASAD *v.* CHUNNI LAL.

[18 All. 113

13.—*Prior and subsequent incumbrancers—Right of subsequent mortgagee to redeem prior mortgage—Manner in which subsequent mortgagee's right of redemption is effected by partial destruction of the prior mortgage—Transfer of Property Act (IV of* 1882), *s.* 74.] One *M R* was a co-mortgagee under mortgages of the years 1867,1868, and 1870, of a village called Ahak and shares in certain other villages, Surajpur, Raipur, Bamoti and Khera Buzurg. *K D*, the plaintiff, was the representative of a subsequent mortgagee of the share in Khera Buzurg. *K D* in 1874 brought the share comprised in his mortgage to sale, and purchased it himself; but without making *M R* or his representatives parties to his suit for sale. Subsequently, in 1879, *M R* sued for a decree for sale of all the property mentioned above, but the decree which he obtained was limited to the village Ahak and the share in Khera Buzurg. *K D* was not made a party to this suit. In 1882, one *M M A* purchased the share in Surajpur, which had been subject to the mortgage sued upon by *M R* in 1879, but had been exempted from the decree obtained by *M R* in 1879. In 1892 *K D* sued for redemption of *M R's* prior mortgage of 1867 and for a declaration of his right upon such redemption to bring to sale the property comprised in the mortgage:—*Held*, that inasmuch as *M R's* interest in the mortgaged property had been limited by the decree of 1879 to the village of Ahak and the share in Khera Buzurg, the plaintiff was not entitled to a decree for the sale of the share purchased by *M M A* in Surajpur. MUHAMMAD MAHMUD ALI *v.* KALYAN DAS.

[18 All. 189

14.—*Transfer of Property Act (IV of* 1882). *s.* 86—*Suit by sub-mortgagee—Decree for sale.*] A sub-mortgagee is entitled to a decree for the sale of the original mortgagor's interest in cases and in circumstances which would have entitled the original mortgagee on the date of the sub-mortgage to claim such relief. MUTHU VIJIA RAGHUNATHA RAMACHANDRA VACHA MAHALI THURAI *v.* VENKATACHELLAM CHETTI.

[20 Mad. 35

15.—*Decree on first mortgage, a puisne not being joined—Purchase of mortgaged property by decree-holder for inadequate price—Right of puisne mortgagee—Interest.*] *A* mortgaged land to *B* and then to *C*. *B* sued on his mortgage, and obtained a

DECREE—*continued.*

(1) FORM OF DECREE—*continued.*

(*d*) MORTGAGE—*concluded.*

decree for sale without joining as defendant *C*, of whose mortgage he had notice; *D*, the son of the decree-holder, became the purchaser in execution and improved the land at a considerable cost. *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage, and sought a decree for sale:—*Held* (1) that the plaintiff was entitled to a decree for sale subject to the right of the representatives of *B*, if the purchaser did not elect to redeem; (2) that the purchaser was not entitled to allowances for improvements; (3) that the plaintiff was entitled to interest at the agreed rate to the date of decree. RANGAYYA CHETTIAR *v.* PARTHASARATHI NAICKAR.

[20 Mad. 120

(*e*) PARTITION.

16.—*Provisional decree in suit for partition—Right of appeal.*] In a suit for partition of family property, a decree was passed declaring the share to which the plaintiff and some of the defendants were entitled in the family property, but reserving all other questions involved in the suit:—*Held*, that the decree was a provisional decree and was subject to appeal, but that it was irregular in form in that it should have contained declarations as to all the rights and liabilities which had been adjudicated on, and directions as to the accounts and inquiries remaining to be taken and made. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR.

[18 Mad. 73

(*f*) POSSESSION.

17.—*Suit for possession of land sold in execution as property of third parties.*] The plaintiffs sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share:—*Held*, that the decree was right. NARASIMHA NAIDU *v.* RAMASAMI.

[18 Mad. 478

18.—*Landlord and tenant—Zur-i-peshgi lease—Sub-lease by zur-i-peshgi lessee—Default by sub-lessee, who lets into possession the original lessor and denies the zur-i-peshgi lessee's title—Suit by zur-i-peshgi lessee for possession in a Civil Court—Jurisdiction of Civil Court—Execution of decree—Civil Procedure Code, ss.* 263 *and* 264.] Two occupancy tenants granted a *zur-i-peshgi* lease of their occupancy holding to one *R L*, for a term of sixteen years. *R L* sublet the holding for a term slightly less than his own. The sub-lessees made default in payment of rent. *R L* distrained their crops. Thereupon the original lessors intervened claiming the crops as theirs. The question of the distraint having been decided by the Court of Revenue against him, *R L* then brought a suit in a Civil Court asking for ejectment of both his lessors

DECREE—*continued.*

(1) FORM OF DECREE—*continued.*

(*f*) POSSESSION—*continued.*

and his lessees and to be put into actual possession himself:—*Held*, that the plaintiff was precluded by reason of the lease granted by him, the term of which had not expired, from obtaining actual possession, unless the sub-lessees were ejected, which could only be done through the Court of Revenue. But the plaintiff was entitled to a decree declaring his title as *zur-i-peshgi* lessee and putting him into possession of the rents and profits of the holding as *zur-i-peshgi* lessee; the decree for possession to be executed under s. 264 of the Code of Civil Procedure. SITA RAM *v.* RAM LAL.

[18 All. 440

19.—*Joint ownership—Decree against joint owner where suit is barred against his co-sharers—Limitation.*] The interest of *V*, as co-sharer in certain land, was sold in execution of a decree against him. It was purchased by *S*, who sold it to the plaintiff. The plaintiff sued for possession, and the other co-sharers were made party defendants to the suit which, however, was held, as against them, to be barred by limitation:—*Held*, that the plaintiff was entitled to be put into joint possession of the land with them, although the suit as against them was barred. KRISHNAJI BIN MALJI *v.* VITHU.

[18 Bom. 505

20.—*Purchaser from one of several divided co-sharers—Suit for joint possession—Partition when unnecessary.*] The property in dispute (consisting of 12 *thikans* or plots of land) was originally held by *A* and *B* as tenants in common, and they divided the income according to their respective shares. After *A's* death, his widow adopted *C* on condition that she was to remain in absolute possession and enjoyment for her life, and that *C* was to succeed to the estate after her death. The widow mortgaged 9 out of the 12 *thikans*, sold one, and granted a perpetual lease of another to the defendant. The defendant also purchased *B's* share in the *thikans* in dispute. The plaintiff purchased *C's* rights, and, on the widow's death, sued to set aside her alienations and to obtain joint possession with the defendant of all the *thikans*. The defendant pleaded (*inter alia*) that the widow's alienations were valid and binding on the plaintiff, and that the plaintiff's remedy was a partition suit:—*Held*, that the plaintiff was entitled to be put into joint possession with the defendant. Both were outside strangers who had purchased the several shares of the separated owners of the *thikans* in dispute. A partition suit was not therefore necessary. ANTAJI *v.* DATTAJI.

[19 Bom. 36

21.—*Suit for exclusive possession—Joint ownership proved at hearing—Procedure.*] Exclusive possession can only be awarded on proof of exclusive title. PARAHSRAM *v.* MIRAJI.

[20 Bom. 569

DECREE—*continued.*

(1) FORM OF DECREE—*concluded.*

(*f*) POSSESSION—*concluded.*

22.—*Suit by co-owner for exclusive possession—Procedure.*] The plaintiff sued for possession of certain land. The lower Court held that the land was the joint property of the plaintiff and defendant, but finding that the plaintiff had been in exclusive possession allowed his claim and gave him a decree. On second appeal, *held*, that exclusive possession could not be awarded unless exclusive title was proved. On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit. NANA *v.* APPA.

[20 Bom. 627

23.—*Co-parcener's right to joint possession of the whole or any part of the joint estate without necessity for partition—Joint Hindu family.*] A co-parcener in a joint Hindu family is entitled to claim joint possession of a portion, and need not sue for a partition. Where it appeared that the parties to the suit each held parcels of the undivided family property in exclusive possession, and the plaintiff asked for joint possession with the defendants:—*Held*, that he was entitled to a decree for joint possession. A co-parcener is entitled to a joint benefit in every part of the undivided estate. RAMCHANDRA KASHI PATKAR *v.* DAMODHAR TRIMBAK PATKAR.

[20 Bom. 467

(2) CONSTRUCTION OF DECREE.

(*a*) GENERAL CASES.

24.—*Ambiguous decree—Reference to pleadings in the suit to ascertain meaning of the decree.*] Where a decree is in its terms ambiguous, it is competent to the Court executing it to refer to the pleadings in the suit in which such decree was passed to ascertain its precise meaning. *Muhammad Sulaiman* v. *Muhammad Yar*, I. L. R. 6 All. 30, distinguished; *Jawahir Mal* v. *Kistur Chand*, I. L. R. 13 All. 343; and *Robinson* v. *Duleep Singh*, L. R. 11 Ch. D. 798, referred to. LACHMI NARAIN *v.* JWALA NATH.

[18 All. 344

25.—*Ambiguous decree.*] In construing a decree, the terms of which are ambiguous, such construction must, if possible, be adopted as will make the decree a decree in accordance with law, and not a decree such as the Court making it had no power to pass. AMOLAK RAM *v.* LACHMI NARAIN.

[19 All. 174

(*b*) ENDOWMENT.

26.—*Construction of a decree as to the appointment of a manager of the property of a religious institution.*] A decree of the High Court declared its holder entitled, as the *Pandara Sannadhi*, or religious chief, of an *adhinam*, to see that a competent person, from among the *Tambirans* who had received initiation at that institution, was appoint-

DECREE—*continued.*

(2) CONSTRUCTION OF DECREE—*continued.*

(*b*) ENDOWMENT—*concluded.*

ed to fill the then vacant office of *Tambiran*, managing certain *matts*. The decree directed that the *Pandara* should name a *Tambiran* of his *adhinam* for the office, whom, after inquiry as to his fitness, the Subordinate Court should appoint. If that Court found him unfit, it was to appoint a *Tambiran* of that *adhinam* upon its own selection. In execution, the *Pandara* named a *Tambiran* for the office, but died before the inquiry as to his fitness. His successor, as head of the *adhinam*, petitioned to withdraw the nomination, naming another *Tambiran*. The Subordinate Court made an order disallowing the withdrawal, and, after inquiry as to the fitness of the first-named *Tambiran*, appointed him to the office. The High Court, on the *Pandara's* appeal, decided that the first nomination had been competently withdrawn and directed an inquiry as to the fitness of the person secondly named, finding on the evidence that the first-named was not fit:—*Held*, that, on the construction of the decree, the first nomination could not be withdrawn and a second one substituted before the inquiry, and that the person first-named was entitled to the Court's decision as to his fitness. On the facts, the finding of the High Court that the first-named *Tambiran* was unfit, was not affirmed; and the order of the Subordinate Judge was maintained. PONNAMBALA TAMBIRAN *v.* SIVAGNANA DESIKA GNANA SAMBANDHA PANDARA SANNADHI.

[17 Mad. 343
[L. R. 21 I. A. 71

(*c*) MESNE PROFITS.

27.—*Civil Procedure Code* (1882), *s.* 211—*Interpretation of decree awarding "future mesne profits."*] A decree for possession of immoveable property was passed by the District Judge of Mirzapur on the 12th of November, 1887, in favour of a plaintiff declaring that "the plaintiff is also entitled to mesne profits." That decree was affirmed by an order of Her Majesty in Council, dated the 11th of May, 1895, without variation in respect of the order as to mesne profits. Possession of the immoveable property to which the decree related was obtained by the decree-holder on the 30th of November, 1895:—*Held*, that the decree of the Privy Council was to be construed as a decree awarding mesne profits up to the date when possession was obtained and from the date of the institution of the suit. *Fakharuddin Mahomed Ahsan* v. *Official Trustee of Bengal*, I L. R. 8 Calc. 178; L. R. 8 I. A 197; and *Puran Chand* v. *Roy Radha Kishen*. I. L. R. 19 Calc. 132, referred to. BIJAI BAHADUR SINGH *v.* BHUP INDAR BAHADUR.

[19 All. 296

(*d*) MORTGAGE.

28.—*Decree for possession after expiry of period of grace—Transfer of Property Act* (*IV of* 1882), *s.* 58—*Right of redemption.*] On default made in payment on a simple mortgage, a Court, instead of decreeing the proper relief, had made a decree

DECREE—*continued.*

(2) CONSTRUCTION OF DECREE—*concluded.*

(*d*) MORTGAGE—*concluded.*

(which, however, had afterwards become final, and had been executed) for possession by the mortgagee after a period of grace. That decree would rightly have been for a judicial sale (Transfer of Property Act, 1882, s. 58). In this suit, brought by the mortgagor for an account to be rendered by the mortgagee, and for redelivery of possession, alleging that the account would show payment of the debt already made out of the rents and profits:—*Held*, that the decree for possession did not amount to a decree for foreclosure or preclude redemption, the possession of the decree-holder having only been as mortgagee, and having involved liability to account to the mortgagor. PAPAMMA RAO *v.* VIRA PRATAPA H. V. RAMACHANDRA RAZU.

[19 Mad. 249
[L. R. 23 I. A. 32

29.—*Transfer of Property Act* (*IV of* 1882), *ss.* 88 *and* 99—*Decree for sale.*] In November, 1882, a decree was passed on a hypothecation bond for the payment of the secured debt, and it contained the following words:—"The property hypothecated in the bond being also held liable for the whole amount thus awarded":—*Held*, that the decree was in reality a decree for sale, and could be executed as such. ANNA PILLAI *v.* THANGATHAMMAL.

[20 Mad. 78

(3) ALTERATION OR AMENDMENT OF DECREE.

30.—*Duty of Court to amend decree—Limitation—Civil Procedure Code* (1882), *s.* 206.] There is no limitation for an application under s. 206 of the Civil Procedure Code, to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. KALU *v* LATU.

[21 Calc. 259

31.—*Civil Procedure Code* (1882), *s.* 206—*Decree for costs—Execution of decree.*] In the lower appeal Court, the plaintiff obtained a decree which directed parties to bear their own costs in proportion in both the Courts, while the judgment directed that the parties should bear each other's costs in proportion in both the Courts. The decree was confirmed by the High Court in cross second appeals without writing a judgment. There was no point taken in either of the appeals as to costs. The plaintiff subsequently applied to the High Court for the amendment of the decree under s. 206 of the Civil Procedure Code (Act XIV of 1882). It was contended for the defendant that the application should have been made to the lower appeal Court:—*Held*, that the only decree which existed for the purposes of execution after the High Court confirmed the decree of the Court below was the decree of the High Court into which that of the lower Court became incorporated. The application was there-

DECREE—*concluded.*

(3) ALTERATION OR AMENDMENT OF DECREE—*concluded.*

fore properly made to the High Court :—*Held*, further, that that being so, and there having been no appeal by either party against the order as to costs, the Court might properly look at the judgment of the Court below with a view to making the decree as to costs agree with it. SHIVLAL KALIDAS *v.* JUMAKLAL NATHIJI DESAI.

[18 Bom. 542

32.—*Civil Procedure Code* (1882), *s.* 206—*Power of Court of first instance to amend its decree after appeal.*] In a suit for land with mesne profits, the District Munsif delivered judgment for the plaintiff, and recorded therein a finding that he was entitled to mesne profits as from a certain date, it having previously been arranged that the amount, if any, awarded for mesne profits should be determined in execution. In the decree no mention was made of the date from which the mesne profits were to be calculated, but it was stated merely that the amount was to be determined in execution. The case went on appeal before the District Judge who modified the decree in certain particulars unconnected with mesne profits. With a view to execution, the plaintiff applied to the Court of first instance to bring the decree into conformity with the judgment. The Court having made an order accordingly, it was objected in the High Court on revision that the order was made without jurisdiction :—*Held*, that the jurisdiction of the Court of first instance to amend the decree under s. 206 was ousted by the confirmation of his decree on appeal. PICHUVAYYANGAR *v.* SESHAYYANGAR.

[18 Mad. 214

DECREE-HOLDER.

——, Purchase by.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[18 All. 36

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 789
[19 Mad. 29

DEED.

Col.

1. Construction ... 343

——, Attestation of.

See HINDU LAW—GIFT—REQUISITES OF GIFT.

[18 Bom. 688

——, Construction of.

See ENGLISH LAW.

[24 Calc. 216

——, Decision as to genuineness of.

See REGISTRATION ACT, S. 77.

[24 Calc. 668

DEED—*continued.*

See RES JUDICATA—MATTERS IN ISSUE.

[21 Calc. 430

——, Delivery of.

See HINDU LAW—GIFT—REQUISITES OF GIFT.

[16 All. 185

See REGISTRATION ACT, S. 17.

[17 Mad. 146

——, Effect of.

See HINDU LAW—JOINT FAMILY—POWER OF ALIENATION OF MEMBERS—MANAGER.

[18 Bom. 631

See ONUS OF PROOF—DEED, EFFECT AND OPERATION OF.

[25 Calc. 78
[L. R. 24 I. A. 186

—— executed in fraud of creditors.

See FRAUD—ALLEGING OR PLEADING FRAUD.

[18 Bom. 372

See TRANSFER OF PROPERTY ACT, S. 53.

[20 Mad. 465

——, Execution of.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[21 Bom. 126

——, Explanation of.

See PARDANASHIN WOMEN.

[18 Mad. 257
[17 All. 125

——, Invalidity of.

See HINDU LAW—INHERITANCE—MODIFICATION OF LAW.

[19 Mad. 501

—— not in accordance with will.

See TRUST.

[18 Bom. 551

—— of appointment in favour of children.

See TRANSFER OF PROPERTY ACT, S. 53.

[22 Calc. 185

—— of assignment of decree.

See REGISTRATION ACT, S. 17.

[23 Calc. 450

—— of relinquishment.

See REGISTRATION ACT, S. 17.

[20 Mad. 367

DEED—*continued.*

——— of sale, Construction of.

See RIGHT OF WAY.

[19 Bom. 797

———, Registration of.

See CASES UNDER REGISTRATION ACT.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[17 Mad. 146

———, Suit for possession under.

See ISSUES—FRAMING AND SETTLEMENT OF ISSUES.

[20 Bom. 753

———, Suppression of.

See SPECIFIC PERFORMANCE.

[20 Mad. 19

———, Suit for execution of.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[18 Bom. 537

See RES JUDICATA—MATTERS IN ISSUE.

[18 Bom. 537

———, Suit to set aside.

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

[17 Mad. 232

See MULTIFARIOUSNESS.

[18 All. 432

(1) CONSTRUCTION.

1.—*"Fasli year"—"Agricultural year"—N.-W. P. Land Revenue Act (XIX of 1873), s. 3, cl. 8—Inconsistent clause.*] The practice adopted by *patwaris*, in some parts of the North-Western Provinces, of applying the term "*Fasli* year" to the "agricultural year" as defined in Act XIX of 1873, s. 3, cl. 8, is erroneous. Where parties to a deed describe a date as being in such and such a "*Fasli*" year, they must be taken, in absence of evidence of mutual mistake, to refer to the calendar *Fasli* year. In interpreting a document, a clause which is inconsistent in any construction thereof with the remaining provisions of the document must be rejected. *Yad Ram* v. *Amir Singh*, Weekly Notes, All. (1882) 174; and *Sheobaran Singh* v. *Bisheshar Dayal Singh*, Weekly Notes, All. (1892) 236, referred to. CHATARBHUJ *v.* DWARKA PRASAD.

[18 All. 388

2.—*Trust—Beneficiary—Proviso for forfeiture of interest in case of insolvency—Insolvency and withdrawal of petition in insolvency.*] By a deed of settlement executed by the plaintiff's father, certain property was conveyed to trustees upon trust to recover the income thereof and to pay

DEED—*concluded.*

(1) CONSTRUCTION—*concluded.*

it to the settlor for life, and after his death to his seven sons, in equal shares, for the maintenance of them and their respective families. The deed provided that, in case any beneficiary became insolvent, "or do or suffer anything whereby his share or any part thereof would through his act or default or by operation of law" become vested in or payable to other persons, then the share and interest of such person should cease, and for the remainder of his life should be paid for the maintenance and support of the family of such persons. In July, 1894, the plaintiff, who was one of the sons of the settlor, filed his petition in insolvency; but, on the 5th December, 1894, he withdrew it:—*Held*, that the forfeiture clause did not take effect, and that the plaintiff was entitled to be paid by the trustees his share of the income of the trust property. HORMUSJI NOWROJI DAVUR *v.* DADABHOY NOWROJI DAVUR.

[20 Bom. 310

DEFAMATION.

See ONUS OF PROOF—DAMAGES.

[19 Bom. 717

1.—*Privilege of Judge—Right of suit—Words used by Judge during case in Court.*] An action for defamation cannot be maintained against a Judge for words used by him whilst trying a cause in Court even though such words are alleged to be false, malicious and without reasonable cause. RAMAN NAYAR *v.* SUBRAMANYA AYYAN.

[17 Mad. 87

2.—*Penal Code (Act XLV of 1860), ss. 499 and 500—Sending a notice containing defamatory matter to the complainant—Publication.*] The mere sending a notice to a person albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm or knowing or having reason to believe that it will harm the reputation of the person to whom it is addressed." When the accused sent by post a notice to the complainant, containing certain false imputations, and the complaint thereupon prosecuted the accused on a charge of defamation under s. 500 of the Penal Code:—*Held*, that the accused was not guilty of defamation. QUEEN-EMPRESS *v.* SADASHIV ATMARAM.

[18 Bom. 205

3.—*Good faith—Privilege—Letter written by guru outcasting member of his caste—Penal Code, s 499.*] *B*, the *guru* or spiritual guide of the caste to which *K* belonged, issued a letter, or *ajna patra*, to *K's* fellow-villagers to the effect that, as *K's* wife had been caught with a man of a lower caste, no one of her co-religionists should have any social intercourse with her, and in effect that she should be outcasted. *K* proceeded against *B* for defamation, and *B* pleaded that the statements contained in the letter were privileged, having been made in good

DEFAMATION—*continued.*

faith and for the public good, and that the case came within one of the exceptions to s. 499 of the Penal Code. It was admitted by *K* that *B* had no enmity towards him or his wife, and that it was the custom of the *guru* to settle such matters as those that had arisen in connection with his wife, and it was proved that the letter was issued after *B* had made an inquiry into the truth of the allegation. The lower Court convicted:—*Held*, that the conviction was wrong, it being clear that the statements contained in the letter had been made in good faith for the protection of the social and spiritual interests of the community of which *B* was the *guru*, and that, so far as they implied a censure on the conduct of *K's* wife, they were justified by the authority with which *B* was vested as spiritual head of the community, and that therefore the case came within the seventh exception to s. 499. BASUMATI ADHIKARINI *v.* BUDRAM KOLITA.

[22 Calc. 46

4.—*Imputation on a wife—Suit by husband—Right of suit.*] In a suit for damages for defamation, it appeared that the words complained of were spoken by the defendant to the plaintiff in the presence of a third party, and were to the effect that the plaintiff's wife had committed adultery with a *pariah* and that her children had been born to the *pariah*:—*Held*, that the suit was not maintainable by the plaintiff. BRAHMANNA *v.* RAMAKRISHNAMA.

[18 Mad 250

5.—*Penal Code* (*Act XLV of* 1860), *ss.* 499 (*excep.* 9), *and* 500—*Privilege of counsel or pleader—Good faith—Prosecution by witness—Construction of statute.*] A pleader, in addressing a Mamlatdar on behalf of his client, who was charged under s. 125 of the Bombay Land Revenue Code (Bombay Act V of 1879) with wilfully removing boundary marks, commented on some of the witnesses for the prosecution, and called them loafers. Thereupon one of those witnesses prosecuted the pleader for defamation. The Magistrate held that there was no justification for the offence, and convicted the pleader, and sentenced him to pay a fine of Rs. 15 under s. 500 of the Penal Code:—*Held*, reversing the conviction and sentence, that in the absence of express malice (which was not to be presumed) the pleader was protected by excep. 9 to s. 499 of the Penal Code:—*Held*, also, that in considering whether there was good faith (*i.e.*, due care and attention), the position of the person making the imputation must be taken into consideration. In the case of an advocate, where express malice is absent, a Court having due regard to public policy would be extremely cautious before depriving him of the protection of excep. 9 to s. 499 of the Penal Code. *Semble*—Section 499 of the Penal Code should be construed without reference to the English law. IN RE NAGARJI TRIKAMJI.

[19 Bom. 340

6.—*Defamatory statement made by a person examined in the course of an official or departmental inquiry—Witness—Privilege—Qualified*

DEFAMATION—*continued.*

privilege—Criminal Procedure Code (1882), *ss.* 191 *and* 197—*Penal Code* (*XLV of* 1860), *ss.* 211 *and* 500—*Falsely charging a person with an offence.*] The complainant was Deputy Collector and first class Magistrate of Bijapur. Certain petitions said to emanate from the accused were received by Government charging the complainant with bribery and corruption. Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to inquire into the matter. Mr. Monteath enforced the attendance of the accused by writing to the Police, who brought the accused before him. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. Mr. Monteath examined other witnesses, and reported the result of his inquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation, under s. 500 of the Penal Code in having stated to Mr. Monteath, in the course of the inquiry, that he (the complainant) had accepted a bribe from him. The trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first framed charges both under ss. 211 and 500. But subsequently he struck out the charge of defamation under s. 500 and convicted the accused under s. 211 of making a false charge. On appeal, the Joint Sessions Judge was of opinion that the charge under s. 211 could not be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate it. As regards the charge of defamation, he was of opinion that the fact of bribery was not proved. But he held that in making the statement to Mr. Monteath, the accused had acted in good faith, and that his case fell under excep. 8 to s. 499 of the Penal Code. He therefore reversed the conviction under s. 211 and acquitted the accused of defamation under s. 500 of the Code. Against this order of acquittal, Government appealed to the High Court:—*Held*, that the accused was guilty of defamation:—*Held*, also, that in the absence of sanction from Government, the inquiry held by Mr. Monteath, the District Magistrate, was not a "taking cognizance" of the offence:—*Held*, further, that as Mr. Monteath was not sitting as a "Court" when he made the inquiry and examined the accused, the accused was not entitled to claim an absolute protection from a charge of defamation as a witness in a judicial proceeding. The accused was only entitled to a qualified privilege depending on the exceptions to s. 499 of the Penal Code. QUEEN-EMPRESS *v.* KARIGOWDA.

[19 Bom. 51

7.—*Penal Code* (*Act XLV of* 1860), *s.* 499—*Publication—Mode of publication defamatory though the imputation be true.*] Under s. 499 of the Penal Code, the person who publishes, and the person who makes, an imputation are alike guilty of defamation. A Court may find that an imputa-

EFAMATION—*concluded.*

tion is true and made for the public good, but on considering the manner of the publication (*e.g.*, in a newspaper) it may hold that the particular publication is not for the public good, and is therefore not privileged. QUEEN-EMPRESS *v.* JANARDHAN DAMODHAR DIKSHIT.

[19 Bom. 703

DEFAULTER.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

[17 Mad. 247

DEFAULTING PROPRIETOR, MEANING OF.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[21 Calc. 702

DEFENDANT.

See LETTERS PATENT, HIGH COURT, CL. 12.

[24 Calc. 190

See PARTIES—ADDING PARTIES TO SUITS—DEFENDANTS.

[18 All. 306
[24 Calc. 640

See PARTIES—STRIKING OFF PARTIES—DEFENDANTS.

[18 All. 53

——, Conduct of.

See COSTS—SPECIAL CASES—LITIGATION UNNECESSARY.

[21 Calc. 680

——, Death of, before decree.

See ATTACHMENT — ATTACHMENT BEFORE JUDGMENT.

[17 Mad. 144

—— not subject to jurisdiction.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[21 Bom. 121

——, Residence of.

See FOREIGN COURT, JUDGMENT OF.

[20 Mad. 112

—— residing out of jurisdiction.

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS OR WORKING FOR GAIN.

[20 Bom. 767

See LETTERS PATENT, HIGH COURT, CL. 12.

[20 Bom. 767

DEFENDANTS.

——, Appeal between.

See PRACTICE—CIVIL CASES—APPEAL.

[18 Bom. 520

DEKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879).

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 347
[19 Bom. 286

——, s. 2.—*Definition of "agriculturist"—Agriculturist also owner of the inam villages and a pensioner—Income from villages, owing to mortgage, together with pension less than income from other sources.*] Where an owner of *inam* villages, the revenue from which, together with his income from other sources not agricultural, was greatly in excess of the income he derived from agriculture, mortgaged the *inam* villages, and thereby reduced the income actually received by him from non-agricultural sources to less than the income he derived from agriculture:—*Held*, that although his income from the *inam* villages and from other sources, not agricultural, might together be sufficient for his maintenance, nevertheless the construction of the definition of "agriculturist" given in the Act which is quite independent of any such question, could not be affected thereby, and that he must be deemed to "earn the means of livelihood" principally from agriculture, and to be an agriculturist within the meaning of Act XVII of 1879. DWARKOJIRAV BABURAV *v.* BALKRISHNA BHALCHANDRA.

[19 Bom. 255

——, s. 4.—*Jurisdiction of second class Subordinate Judge—Transfer of case—Institution of suit—Civil Procedure Code* (1882), *s.* 48—*Presentation of plaint.*] The plaintiff sued to establish his title to, and recover, a moiety of a cash allowance payable to him from the Mamlatdar's treasury at Satara. The claim was valued at Rs. 455-4. The plaint was filed in the Court of the first class Subordinate Judge at Satara, who transferred the case for trial to the Joint Subordinate Judge of the second class. The latter Judge dismissed the suit on the merits, holding that the plaintiff had no right to the moiety of the allowance which he sought to recover. This decision was reversed, on appeal, by the Assistant Judge, on the ground that the Joint Subordinate Judge of the second class had no jurisdiction to hear the suit under s. 4 of the Dekhan Agriculturists Relief Act (XVII of 1879):—*Held*, that the requirements of s. 4 of Act XVII of 1879 were sufficiently complied with by the suit having been *filed* in the Court of the Subordinate Judge of the first class. He was competent under s. 23 of Act XIV of 1869 to transfer the suit to the Joint Subordinate Judge of the second class who was deputed to assist him. MANAJI BAHIRJI *v.* NARAYANRAO MADHAVRAO.

[19 Bom. 46

DEKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)—*continued.*

——, **s. 13, cls. (b) and (d), and s. 15**—*Suit for redemption—Account—Principal debt how ascertained — Reference to arbitration.*] In a redemption suit under the Dekhan Agriculturists Relief Act (XVII of 1879), the Court should, in taking an account, form its own opinion on the subject. As the law stands, a mere guess as to the sum of money actually advanced cannot be made in favour either of one side or the other. If there are no materials from which the Court can satisfy itself as to the amount which should be allowed on account of principal, whether under cl. (*b*) or cl (*d*) of s. 13 of the Act, it is open to it to have recourse to arbitration under the provisions of s. 15. *Mahadu* v. *Rajaram*, P. J. 1887, p. 216, considered; *Maloji* v. *Vithu*, I. L. R. 9 Bom. 520, referred to. DHONDI *v.* LAKSHMAN.

[19 Bom. 553

——, **s. 15.**

See s. 13.

[19 Bom. 553

——, **s. 15B.**—*Decree for redemption—Order for the payment of money within a certain period—Application after expiry of such period for payment by instalments—Alteration of decree.*] In a redemption suit under the Dekhan Agriculturists Relief Act (Act XVII of 1879), the Court having passed a decree for the payment of the mortgage amount within a certain period, and the decree being confirmed in second appeal, the mortgagor, after the expiration of the time for redemption specified in the decree, applied to the High Court for an order for the payment of the amount by instalments under s. 15B of the Dekhan Agriculturists Relief Act:—*Held*, that such an order could only be made in the course of the proceedings under the decree, that is, by the Court which carries out the decree. *Golabpuri* v. *Pandurang*, P. J. 1886, p. 142, referred to. BHAGIRATHIBAI *v.* HARI RAVJI CHIPLUNKAR.

[19 Bom. 318

——, **s. 15D.**—*Dekhan Agriculturists Relief Act Amendment Act (XXII of 1882)—Suit for account—Subsequent suit for redemption—Civil Procedure Code* (1882), *s.* 43.] Under s. 15D of the Dekhan Agriculturists Relief Act (XVII of 1879) as amended by Act XXII of 1882, an agriculturist mortgagor can sue for an account upon a mortgage, without at the same time asking for redemption. Such a suit will not bar a subsequent suit for redemption. The section was expressly intended to remove the bar created by s. 43 of the Code of Civil Procedure (Act XIV of 1882). LALUCHAND *v.* GIRJAPPA.

[20 Bom. 469

——, **s. 22.**—*Dekhan Agriculturists Relief Act Amendment Act (XXII of 1882), s. 9—Mortgage by agriculturist—Subsequent money decree against mortgagor—Effect of sale of his equity of redemption in execution—Immoveable property—Suit for redemption.*] *R*, an agriculturist, mortgaged the land in dispute to the defendant in 1872. In 1875 one *D* obtained a decree against *R* (the mortgagor), who was then represented by his widow, the plaintiff. In execution of this decree, *R's* equity of redemption was sold on the 10th February, 1883, and was bought by the son of the defendant (the mortgagee). On the 12th April, 1883, the sale was confirmed; and, on the 10th November, 1883, the purchaser took formal possession of the land. In 1891 the plaintiff (widow and heir of the mortgagor *R*), brought this suit to redeem the mortgage and to recover possession of the land, contending that under s. 22 of the Dekhan Agriculturists Relief Act (XVII of 1872), the sale of the equity of redemption was a nullity. The lower Court dismissed the suit, holding that although the sale might be illegal, so long as the certificate of sale remained in force, it was a bar to the plaintiff's right to redeem:—*Held*, that the plaintiff, being found to be an agriculturist, the Dekhan Agriculturists Relief Acts (XVII of 1879 and XXII of 1882) applied. The provisions of those Acts applied, although the decree and order for sale under which the sale took place were made before the Acts were passed. The Acts expressly forbid the immoveable property of an agriculturist to be sold in execution, and an equity of redemption is immoveable property within the contemplation of the Acts. The sale therefore, on the 10th February, 1883, of the equity of redemption in the mortgaged lands was illegal and a nullity, and was no defence to the plaintiff's suit to redeem the mortgage. MAHALAVU *v.* KUSAJI.

[18 Bom. 739

——, **s. 44.**—*Expression "show cause," Meaning of—Civil Procedure Code* (1882), *s.* 525.] The expression "show cause" in para. 2, s. 44 of the Dekhan Agriculturists Relief Act (XVII of 1879), means to allege and prove sufficient cause, and not simply to object. *Dandekar* v. *Dandekars*, I. L. R. 6 Bom. 663; and *Surjan Raot* v. *Bhikari Raot*, I. L. R. 21 Calc. 213, referred to. RAJMAL MOTIRAM MARVADI *v.* KRISHNA VALAD MAHIPATI HAGADEKAR.

[20 Bom. 208

——, **s. 47.**

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—DEKHAN AGRICULTURISTS RELIEF ACT.

[21 Bom. 63

——, **s. 49.**

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

[19 Bom. 202

——, **s. 53.**

See REVIEW—POWER TO REVIEW.

[19 Bom. 113,116
[20 Bom. 281

DEKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)—*concluded.*

——, s. 53.—*Revisionary power of the Special Judge—Cases in which failure of justice appears to have taken place—Discretion of Court.*] Under s. 53 of the Dekhan Agriculturists Relief Act (XVII of 1879) the Special Judge has a revisionary power in all cases where a failure of justice appears to have taken place. It is for him to decide whether the finding on a question of fact by a Subordinate Judge is of that nature, and in doing so he is entirely within his jurisdiction. *Shidhu* v. *Bali*, I. L. R. 15 Bom. 180, dissented from. GURUBASAYA *v.* CHANMALAPPA.

[19 Bom. 286

——, s. 56.

See REGISTRATION ACT, s. 17.

[19 Bom. 239

——, s. 60.

See REGISTRATION ACT, s. 17.

[19 Bom. 239

——, s. 73.

See REVIEW—POWER TO REVIEW.

[19 Bom. 113, 116

See STATUTES, CONSTRUCTION OF.

[21 Bom. 822

——, s. 74.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—DEKHAN AGRICULTURISTS RELIEF ACT.

[21 Bom. 63

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

[19 Bom. 202

See REVIEW—POWER TO REVIEW.

[19 Bom. 113, 116

DEKHAN AGRICULTURISTS RELIEF ACT AMENDMENT ACT (VI OF 1895).

See STATUTES, CONSTRUCTION OF.

[21 Bom. 822

DELAY.

See ENCROACHMENT.

[20 Bom. 298

See LIMITATION ACT, s. 28.

[17 Mad. 255

—— **in presenting appeal or review.**

See CASES UNDER LIMITATION ACT, s. 5.

DELEGATION OF AUTHORITY.

See PLEADER—APPOINTMENT AND APPEARANCE.

[20 Bom. 293

DELEGATION OF POWERS BY LOCAL GOVERNMENT.

See PORTS ACT, s. 6.

[17 Mad. 118

DELEGATION OF FUNCTIONS.

See PENAL CODE, s. 186.

[22 Calc. 596, 759

DELIVERY ORDER.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[21 Calc. 173

DELIVERY OF GOODS.

See BILL OF LADING.

[19 Mad. 169

DEMAND, MONEY PAYABLE ON.

See LIMITATION ACT, ART. 60.

[18 Mad. 390
[19 Bom. 352, 775

See LIMITATION ACT, ART. 132.

[20 Mad. 245

DEMURRAGE.

See INTERPLEADER SUIT.

[18 Bom. 231

DEPOSIT.

See LIMITATION ACT, ART. 60.

[18 Mad. 390
[19 Bom. 352, 775

—— **in Court.**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[20 Mad. 158

See TRANSFER OF PROPERTY ACT, s. 83.

[17 Mad. 267

—— **in Court, Order refusing to accept.**

See APPEAL—ORDERS.

[19 All. 140

—— **of rent in Court.**

See BENGAL TENANCY ACT, s. 61.

[21 Calc. 680

—— **of revenue to stay sale.**

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

[17 Mad. 247

DEPOSIT OF TITLE-DEEDS.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[19 All. 76

DEPOSIT OF TITLE-DEEDS—*concluded.*

See NEGOTIABLE INSTRUMENTS ACT, s. 13.

[17 Mad. 85

1.—*Equitable mortgage—Transfer of Property Act (IV of* 1882), *s.* 59—*Mortgage by deposit of title-deeds before the coming into force of Act IV of* 1882.] Up to the 1st of July, 1882, being the date of the coming into force of Act IV of 1882, there was no difference between the law in the Mofussil and that prevalent in the Presidency towns as to the validity of a mortgage created by a deposit of title-deeds with a creditor with intent to secure a debt. *Waghela Rajsanji* v. *Masludin*, I. L. R. 11 Bom. 551; L. R. 14 I. A. 89; *Varden Seth Sam* v. *Luckpathy Royjee Lallah*, 9 Moo. I. A. 307; *Bunsee Dhur* v. *Heera Lall*, 1 N. W. 166; *Lalji* v. *Gobind Ram*, 6 Sel. Rep. 165; and *Muhammad Ali* v. *Salat Jang*, 4 Sel. Rep. 168, referred to. A mortgage effected as above described will cover future advances as well as the existing debt or contemporaneous advance in respect of which it was made. *Ex-parte Langston*, 17 Ves. Jr. 237, referred to. HIMALAYA BANK *v.* QUARRY.

[17 All. 252

2.—*Transfer of Property Act (IV of* 1882), *s.* 59—*Equitable mortgage—Immoveable properties situated partly outside the limits of Calcutta—Transaction in Calcutta—Form of decree on mortgage—Practice.*] The defendant borrowed money from the plaintiff in Calcutta by deposit of title-deeds relating to immoveable properties situated partly inside and partly outside the limits of the town of Calcutta. In a suit by the plaintiff it was *held* that the transaction having taken place in Calcutta, the mortgage was valid as an equitable mortgage under s. 59 of the Transfer of Property Act, though some of the properties were situated outside the limits of the town, and that, according to the practice of the Court, the appropriate remedy in such a mortgage suit is a decree for sale. SRINATH ROY *v.* GODADHUR DAS.

[24 Calc. 348

DEPOSITION.

See COMMISSION—CRIMINAL CASES.

[19 Bom. 749

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

[21 Calc. 392
[16 All. 88
[23 Calc. 361

See LIMITATION ACT, s. 19.

[20 Mad. 239

—— not cross-examined on.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

—— in criminal case.

See EVIDENCE ACT, s. 33.

[23 Calc. 441

"DESCENDANTS," MEANING OF.

See GHATWALI TENURE.

[22 Calc. 156

DEVISEE, RIGHT OF SELECTION BY.

See WILL—CONSTRUCTION.

[18 Mad. 460

DILUVION.

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.

[18 All. 290

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[23 Calc. 863

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[23 Calc. 863

DIRECTORS.

See BANKERS.

[16 All. 88

See CASES UNDER COMPANY—POWERS, DUTIES AND LIABILITIES OF DIRECTORS.

See LIMITATION ACT, s. 10.

[18 Bom. 119

—— of mosque.

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

——, Proceeding against.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[19 Bom. 88
[18 All. 12

See LIMITATION ACT, ART. 36.

[18 All. 12
[19 Mad. 149

DISCOVERY.

See INSPECTION OF DOCUMENTS.

[22 Calc. 891
[19 Bom. 350

See INTERROGATORIES.

[23 Calc. 117

DISCRETION OF COURT.

See COSTS—SPECIAL CASES—PAYMENT INTO COURT.

[21 Bom. 502

See DECREE—FORM OF DECREE—MORTGAGE.

[20 Bom. 196

See DEKHAN AGRICULTURISTS ACT, s. 53.

[19 Bom. 286

See DIVORCE ACT, s. 14.

[20 Bom. 362

DISCRETION OF COURT—*concluded.*

See INJUNCTION — SPECIAL CASES—BREACH OF AGREEMENT.
[18 Bom. 702
[19 Bom. 764

See INSOLVENT ACT, S. 9.
[21 Bom. 297

See INSOLVENT ACT, S. 86.
[19 Bom. 297, 778

See LIMITATION ACT, S. 5.
[20 Bom. 736

See PARDANASHIN WOMEN.
[21 Calc. 588

See PLAINT—AMENDMENT OF PLAINT.
[21 Bom. 570

See PROBATE—TO WHOM GRANTED.
[21 Calc. 195

See RECEIVER.
[19 Mad. 120
[L. R. 23 I. A. 28

See RESTITUTION OF CONJUGAL RIGHTS.
[21 Bom. 610

See REVIEW—POWER TO REVIEW.
[19 Bom 113, 116
[20 Bom. 281

See REVISION—CIVIL CASES—SMALL CAUSE COURT CASES.
[16 All. 476

See RULE TO SHOW CAUSE.
[23 Calc. 347

See SECURITY FOR COSTS—SUITS.
[21 Calc. 832

See SENTENCE—GENERAL CASES.
[22 Calc. 805

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.
[18 Bom. 61, 347
[19 Bom. 286, 790

DISHONOUR, NOTICE OF.

See HUNDI.
[20 Bom. 488

DISMISSAL OF APPEAL.

See APPEAL—DISMISSAL OF APPEAL.
[21 Bom. 548
[24 Calc. 759

—— for default.

See APPEAL—DECREES.
[23 Calc. 115, 827

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[23 Calc. 827

DISMISSAL OF APPEAL—*concluded.*

—— on failure to deposit costs of paper book.

See LIMITATION ACT, ART. 168.
[23 Calc. 339

See REVIEW—POWER TO REVIEW.
[23 Calc. 339
[24 Calc. 350

DISMISSAL OF APPLICATION FOR EXECUTION.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[18 Bom. 429

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
[21 Calc. 784
[L. R. 21 I. A. 89

DISMISSAL OF SUIT.

See CIVIL PROCEDURE CODE, S. 100.
[18 Bom. 59

See CIVIL PROCEDURE CODE, S. 102.
[23 Calc. 991

See COURT-FEES ACT, S. 11.
[24 Calc. 173

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.
[21 Calc. 561

—— Effect of.

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER
[22 Calc. 1011
[L. R. 22 I. A. 203

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
[18 Mad. 466
[21 Bom. 91

See RES JUDICATA—MATTERS IN ISSUE.
[24 Calc. 900

—*Civil Procedure Code* (1882), *ss.* 32, 45 *and* 46—*Dismissal of suit against one defendant without trial after first hearing.*] The plaintiff sued for damages for the infringement of certain hereditary rights claimed by him in connection with a temple. The first defendant was a Magistrate, and it was alleged as the cause of action against him that he had disobeyed the instructions of his superiors and played into the hands of the other defendants by passing an illegal order After issues had been framed the Judge without trial dismissed the suit with costs against the first defendant:—*Held*, that the order was illegal. SINGA REDDI *v.* MADAVA RAU.
[20 Mad. 360

DISPOSSESSION.

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION.
[20 Bom. 351

See LIMITATION ACT, ART. 12.
[20 Mad. 118

See MAMLATDAR, JURISDICTION OF.
[20 Bom. 351

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[18 Bom. 522

—— by trespasser.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[19 All. 34, 456

See TRANSFER OF PROPERTY ACT, S. 68.
[19 All. 191

DISQUALIFICATION.

—— of Magistrate or Judge.

See JUDGE.
[19 Bom. 608

See CASES UNDER MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION.

—— of Manager.

See HINDU LAW—ENDOWMENT — SUCCESSION IN MANAGEMENT.
[22 Calc. 843

DISTINCT SUBJECTS.

See COURT-FEES ACT, S. 17.
[16 All. 401

DISTRAINT.

—— of crops.

See SPECIAL OR SECOND APPEAL - SMALL CAUSE COURT SUITS - DAMAGES.
[24 Calc. 163

——, Right of.

See MADRAS REVENUE RECOVERY ACT, S. 11.
[17 Mad. 404

DISTRESS.

See COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.
[21 Calc. 979

DISTRESS WARRANT.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[22 Calc. 935

DISTRICT JUDGE.

——, Appeal from decree of.

See HIGH COURT, JURISDICTION OF—HIGH COURT, N.-W. P.—CIVIL.
[18 All. 375

——, Appeal from Revenue Court to.

See APPEAL—ORDERS.
[16 All. 375

DISTRICT JUDGE, JURISDICTION OF.

See ACT XX OF 1863, S. 5.
[19 Mad. 285

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE.
[19 Bom. 821

See COMPANIES ACT, S. 130.
[17 All. 252

See DIVORCE ACT, S. 2.
[20 Bom. 362

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &C.
[18 Bom. 61

See LAND ACQUISITION ACT (1870), S. 15.
[19 All. 339

See LUNATIC.
[24 Calc. 133

See PROBATE—JURISDICTION OF DISTRICT COURT.
[20 Bom. 607

See RECEIVER.
[23 Calc. 517
[18 All. 453
[21 Bom. 328

See REVIEW—POWER TO REVIEW.
[19 Bom. 113

See RIGHT OF SUIT — CHARITIES AND TRUSTS.
[21 Bom. 48

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.
[16 All. 80
[19 All. 121

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[17 Mad. 167

See VALUATION OF SUIT—APPEALS.
[18 Bom. 40, 100, 207
[16 All. 286
[19 Bom. 198
[20 Bom. 265

—*Appeal from insolvency order—Civil Procedure Code* (1882), *s.* 589—*Civil Procedure Code Amendment Acts* (*VII of* 1888), *s.* 56, *and* (*X of* 1888), *s.* 3, *cl.* (*a*).] Bearing in mind that s. 589 of the

DISTRICT JUDGE, JURISDICTION OF—*concluded.*

Code of Civil Procedure was passed to regulate the appellate jurisdiction in appeals from orders, the words 'Court subordinate to that Court' in s. 3 of Act X of 1888 must be construed with reference to its appellate jurisdiction. Consequently a District Court has no jurisdiction to hear an appeal from an order in insolvency matters, in a case where it has no jurisdiction to hear an appeal in the suit itself, as when the subject-matter of the suit is more than Rs. 5,000 in value. VENKATRAYER *v.* JAMBOO AYYAN.

[17 Mad. 377

DIVESTING OF ESTATE.

See HINDU LAW—ADOPTION—EFFECT OF ADOPTION.

[22 Calc. 565

[21 Bom. 319

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

DIVIDENDS.

——, Payment of, out of deposit in bank.

See BANKERS.

[16 All. 88

DIVISION BENCH OF HIGH COURT, JURISDICTION OF.

—*Division Bench taking civil business—Order under Civil Procedure Code, s.* 643.] A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under s. 643 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group. MAHOMED BHAKKU *v.* QUEEN-EMPRESS.

[23 Calc. 532

DIVORCE.

See HINDU LAW—CUSTOM—IMMORAL CUSTOMS.

[17 Mad. 479

See HUSBAND AND WIFE.

[21 Bom. 77

——, Plea of.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[19 All. 50

——, Suit for.

See GUARDIAN—APPOINTMENT.

[18 Bom. 366

See PARSI MARRIAGE AND DIVORCE ACT, s. 30.

[18 Bom. 366

DIVORCE ACT (IV OF 1869).

——, Appeal in case under.

See HIGH COURT, JURISDICTION OF—HIGH COURT, N.-W. P.—CIVIL.

[18 All. 375

DIVORCE ACT (IV OF 1869)—*continued.*

——, s. 2.—*Jurisdiction of District Court—Adultery committed in India — Place of marriage.*] Under s. 2 of the Indian Divorce Act (IV of 1869), a District Court has jurisdiction to make a decree for dissolution of marriage upon being satisfied that the adultery charged has been committed in India without going into evidence as to the place of the marriage of the parties. KYTE *v.* KYTE AND COOKE.

[20 Bom. 362

1.—s. 7.—*Suit for dissolution of marriage—Evidence of marriage—Judicial separation, Previous decree for—Cruelty—Adultery—Identity of parties.*] In a suit for dissolution of marriage by reason of the cruelty and adultery of the respondent, the first charge and the marriage of the parties were held to be established by the production of a previous decree for judicial separation on account of cruelty, and by proof of the identity of the parties. *Bland* v. *Bland*, 35 L. J. P. & M. 104, followed. LEDLIE *v.* LEDLIE.

[22 Calc. 544

2.—s. 7.—*Nature of the marriages contemplated by the Act—Suit for dissolution of marriage—Monogamous marriage.*] The petitioner and his wife married according to the rites of the Hindu religion. The wife subsequently left her husband and lived in adultery with another man. Both the husband and wife subsequently became Christians, but the wife continued to live in adultery. The husband sued under Act IV of 1869 for the dissolution of the marriage:—*Held*, that, having regard to s. 7, the marriages contemplated by the Act are those founded on the Christian principle of a union of one man and one woman to the exclusion of others, and that consequently the Act does not contemplate relief in cases where the parties have been married under the rites of Hindu law, a Hindu marriage not being a monogamous one. *Hyde* v. *Hyde*, L. R. P. & D. 130; and *Brinkley* v. *Attorney-General*, L. R. 15 P. D. 76, cited and followed. *Gobardhan Dass* v. *Jasadamoni Dassi*, I. L. R. 18 Calc. 252, dissented from. THAPITA PETER *v.* THAPITA LAKSHMI.

[17 Mad. 235

——, s. 14.—*Marriage by petitioner before decree of District Court confirmed by High Court—Ignorance of law—Discretion of Court to make decree absolute.*] After the District Court had passed a decree for dissolution of marriage, but before the confirmation of the decree by the High Court, the petitioner, in ignorance of the law, married another woman, but he ceased to cohabit with the woman on discovering his mistake. Under the circumstances, the High Court made the decree absolute, holding that, under s. 14 of the Indian Divorce Act (IV of 1869), it had a discretion to do so. KYTE *v.* KYTE AND COOKE.

[20 Bom. 362

1.—s. 35.—*Husband and wife — Suit against wife—Costs of wife—Practice—Rules and regulations in divorce cases in England.*] In a suit for a divorce instituted by a husband against his wife, the Court has a discretion to make the

DIVORCE ACT (IV OF 1869)—*continued.*

husband pay the wife's costs already incurred, and to give security for her future costs. Rule 158 (as amended 14th July, 1875) of the English Rules and Regulations in divorce cases, which govern the practice of the Court in England, ought, having regard to s. 7 of the Indian Divorce Act (IV of 1869), to govern the practice of Indian Courts. MAYHEW *v.* MAYHEW.

[19 Bom. 293

2.—s. 35.—*Husband and wife—Suit against wife—Costs of wife—Practice.*] Unless special circumstances are made out, the husband will not be ordered to pay the wife's costs in a suit by the husband for dissolution of the marriage. *Proby* v. *Proby*, I. L. R. 5 Calc. 357, followed. THOMAS *v.* THOMAS.

[23 Calc. 913

YOUNG *v.* YOUNG.

[23 Calc. 916 note

As to costs where the petition for dissolution of marriage by a wife is withdrawn.

See BUTT *v.* BUTT.

[25 Calc. 222

1.—s. 36.—*Alimony "pendente lite"—Application for alimony after decree nisi.*] The Court has jurisdiction to grant alimony *pendente lite* in a suit by the husband for dissolution of marriage on an application made by the wife after a decree *nisi* has been pronounced. THOMAS *v.* THOMAS.

[23 Calc. 913

2.—s. 36.—*Alimony—Application for refund of alimony paid by mistake after the period during which it was payable had expired—Minor children—Divorce Act, s. 3, cl. (5).*] In 1882, a decree for dissolution of marriage between *E M* and *S M* was passed by the High Court on the wife's petition, and the husband was ordered to pay alimony for the wife and certain minor children of the marriage. On the 26th of August, 1895, a petition was presented to the Court on behalf of *E M* stating that *S M* had married again on the 3rd of August, 1895; that one of the children in respect of whom alimony was payable had come of age on the 16th of April, 1895; and that another of such children had married in April, 1893, and it was prayed that certain sums which had been paid into Court after the respective dates mentioned above as alimony in respect of the three persons above referred to might be refunded:—*Held*, that *E M* was not entitled to any refund of alimony except as to sums, if any, paid into Court after the date of the filing of petition for refund and relating to a period subsequent to that date. IN THE MATTER OF THE PETITION OF MORGAN.

[18 All. 238

——, s. 55.—*Appeal from decree for dissolution of marriage—Omission to appeal as to damages—Power of High Court to deal with whole case on appeal.*] The decree in a suit for dissolution of marriage by the husband having awarded damages against the co-respondent, and he not having

DIVORCE ACT (IV OF 1869)—*concluded.*

appealed on the question of damages, it was contended that the High Court could only deal with that part of the decree which dissolved the marriage:—*Held*, under the Indian Divorce Act (IV of 1869), that the Court had the fullest power to deal with the case according as justice might require, including the award of damages by the Court below. *Ravenscroft* v. *Ravenscroft* L. R. 2 P. & M. 376, followed. KYTE *v.* KYTE AND COOKE.

[20 Bom. 362

DOCUMENT.

——, Cancellation of.

See REGISTRATION ACT, s. 77.

[18 Mad. 255

——, Construction of.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH.

[19 Mad. 485

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[16 All. 39

——, Execution of.

See STAMP ACT, s. 16.

[19 Bom. 635

——, Fabrication of, to conceal embezzlement.

See FORGERY.

[22 Calc. 313

——, Giving right to obtain another.

See REGISTRATION ACT, s. 17.

[18 Bom. 13, 396

——, Insufficiently stamped.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.

[18 Bom. 737

——, Lost.

See STAMP ACT, s. 39.

[17 Mad. 473

——, Production of.

See INTERROGATORIES.

[23 Calc. 117

——, Unattested.

See EVIDENCE ACT, s. 68.

[18 Mad. 29

——, Unstamped.

See STAMP ACT, s. 34.

[18 All. 295

——, Unstamped or unregistered.

See CASES UNDER EVIDENCE — CIVIL CASES — SECONDARY EVIDENCE — UNSTAMPED AND UNREGISTERED DOCUMENTS.

DOCUMENT—*concluded.*

See RIGHT OF SUIT—MONEY LENT.

[23 Calc. 851

——, **Tender of, to witness in cross-examination.**

See RIGHT OF REPLY.

[16 All. 88

DOCUMENTS.

See INSPECTION OF DOCUMENTS.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

[17 All. 428

——, **Affidavit of.**

See INSPECTION OF DOCUMENTS.

[22 Calc. 105, 891

[19 Bom. 350

——, **Ancient, Proof of.**

See EVIDENCE ACT, s. 90.

[20 Bom. 1

——, **Loss or destruction of.**

See REGISTRATION ACT, s. 50.

[20 Mad. 250

See RIGHT OF SUIT — DOCUMENTS, LOSS OR DESTRUCTION OF.

[20 Mad. 250

——, **Recitals in.**

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS.

[17 All. 428

——, **Suits concerning.**

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

[17 Mad. 232

DOMICILE.

See SUCCESSION ACT, s. 4.

[23 Calc. 506

—— **in Native State.**

See LETTERS OF ADMINISTRATION.

[21 Calc. 911

—Domicile of widow—Capacity to make contract—Contract Act (IX of 1872), s. 11.] The domicile of a widow is the same as was her husband's unless she has changed it since his death. By the law of England the question of the capacity of a person to enter into a contract is decided by the law of the person's domicile. This principle of English law is adopted by s. 11 of the Contract Act. KASHIBA *v.* SHRIPAT NARSHIV.

[19 Bom. 697

DOWER.

See MAHOMEDAN LAW—DOWER.

[21 Calc. 135

DOWER—*concluded.*

——, **Suit for.**

See JOINDER OF CAUSES OF ACTION.

[18 All. 256

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 All. 400

EASEMENT.

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[20 Bom. 704

[19 All. 259

See JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF.

[18 Mad. 163

See CASES UNDER PRESCRIPTION—EASEMENTS.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

[19 All. 153

See RIGHT OF SUIT—PRIVACY, INVASION OF.

[18 Mad. 163

See RIGHT OF WAY.

[19 Bom. 797

——, **Agreement to prevent acquisition of.**

See REGISTRATION ACT, s. 17.

[20 Bom. 704

——, **Dispute concerning.**

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, &C.

1.—*Criminal Procedure Code* (1882), *s.* 147—*Limitation Act* (1877), *s.* 3—*Easements Act* (1882), *s.* 4.] The term "easements" includes profits *à prendre;* it has not been used by the Legislature of this country in the restricted sense in which it is used in English law so as to exclude profits *à prendre.* DUKHI MULLAH *v.* HALWAY.

[23 Calc. 55

2.—*Right of way—Right to use of drain—Mortgage of part of a house—Easement over the other part granted to the mortgagee by the mortgage-deed—Subsequent sale of parts of the house to different owners—Sale of mortgaged part subject to the mortgage—Mortgage paid off by purchaser—Purchaser's right to easement—License—Grant of right of way in a mortgage of part of property of mortgagor—Reservation by mortgagor of similar right in respect of other property not mortgaged by him—Vendor and purchaser—Sale of land subject to a mortgage giving a right of way.*] *V*, the owner of a house, mortgaged the east portion of it to *M*, in 1878. The mortgage-deed gave to the mortgagee the use of a certain privy situated in another part of the house and the right of way

EASEMENT—*continued.*

to it through a certain *bol* or passage. *V* subsequently sold the whole house to *C*, and *C*, in 1880, mortgaged the western part of it to *R*, who got a decree, and in execution the part mortgaged to him (*i.e.*, the west) was sold in 1885, and the defendant became the purchaser. In 1887, *C* sold the east part to the plaintiff, who paid off the mortgage to *M*, and obtained *M*'s endorsement of payment on his deed of conveyance. The plaintiff subsequently sued to restrain the defendant from interfering with his use of the passage and of the privy. The defendant alleged that both were comprised in the property purchased by him at the Court sale in 1885, and that the right given by the mortgage of 1878 was merely a license to the mortgagee and not an easement:—*Held* that the use of the passage and of the privy was a privilege granted by the very instrument which created the mortgage, and should be regarded as a privilege ancillary to the use of the part of the house mortgaged to *M*, in 1879. The defendant's purchase in 1885 was subject to the easement acquired by *M* (the mortgagee), and the plaintiff had purchased the mortgagee's interest in the house, which included her right by way of easement. The plaintiff was therefore entitled to the use of the privy and the passage. In the mortgage-deed of 1880, by which the west part of the house was mortgaged by *C* to *R*, the following clause was contained:—"You are to have the use of the drain for passing water as it has continued from old times":—*Held*, that these words should be understood as intended to reserve to *C* (the mortgagor), in respect of the part of the house not included in the mortgage, a right to use the drain similar to the right given to the mortgagee. The right so reserved by *C* was afterwards sold by *C* to the plaintiff along with the east part of the house in 1887, and the plaintiff was therefore entitled to the use of the drain. The plaintiff purchased a part of the house which the vendor had previously mortgaged to *M*. The mortgage-deed gave to the mortgagee the use of a certain privy and the right of going to it through a passage situated at the rear of the mortgaged part of the house. *M* was not a party to the conveyance to the plaintiff, but at the time of the purchase, the plaintiff paid off *M's* mortgage, and *M* signed a receipt for the mortgage-money endorsed on the conveyance:—*Held*, that the plaintiff must be taken to have purchased the mortgagee's interest in the house, including the right by way of easement over the passage. VISHNU *v.* RANGO GANESH.

[18 Bom. 382

3.—*Easements of necessity—Light and air—Severance of tenements by grantor—Implied reservation of easement—Derogation of grant—Reservation of easements of necessity—Injunction—Easements Act* (*V of* 1882), *s.* 13—*Act VIII of* 1891.] One *W* was the owner of a certain house behind which was a courtyard or *chok*, half of which belonged to him and the other half to one *M*, (the defendant's father,) who owned a house close by. Two of the rear rooms of *W's* house abutted upon his portion of the *chok*, and had two doors

EASEMENT—*concluded.*

opening out into the *chok*. In 1861, *W* sold (*inter alia*) his half of the *chok* to *M*. The conveyance contained no reservation of any rights over the *chok*. *W* having died in 1875-76, his widow, *J*, sold his house to the plaintiff, and shortly afterwards the defendant (*M's* son) put up a hoarding on the *chok*, which blocked up the above-mentioned doors of the plaintiff's house, and obstructed the light and air passing through them into the said two rear rooms. The plaintiff sued for an injunction:—*Held*, that as *W* had made an absolute sale to *M* of his portion of the *chok*, expressly reciting that he had reserved no interest in the *chok*, it would, in the circumstances of this case, be contrary to equity and good conscience to hold that he impliedly reserved a right of light and air over the *chok*, so as to prevent *B* from building on the *chok* and thus obstructing the windows and doors in *W's* house overlooking the *chok*:—*Held*, also, that the case was not governed by s. 13, cl. (*c*) of the Easements Act (V of 1882), which was not extended to the Bombay Presidency till Act VIII of 1891 was passed. CHUNILAL MANCHARAM *v.* MANISHANKAR ATMARAM.

[18 Bom. 616

4.—*Easement by custom—Water rights—Landlord and tenant.*] The plaintiffs were lessees from a zemindar of his entire zemindari and were in occupation of lands depending for irrigation on a tank into which a natural stream emptied itself. The defendants were tenants in the zemindari, holding (under a lease prior to that of the plaintiffs) land supplied with water by an irrigation channel from the stream. The defendants erected a dam across the stream when it was low, and this had the effect of diverting all the water into the irrigation channel supplying their land. In a suit for an injunction that the dam be removed, the lower Appellate Court upheld a plea by the defendants that the dam had been erected in exercise of an established customary right of easement:—*Held*, that the customary easement asserted by the defendants was not unreasonable, and was enforceable by them against the lessees of the zemindar. ORR *v.* RAMAN CHETTI.

[18 Mad. 320

EASEMENTS ACT (V OF 1882).

See CASES UNDER EASEMENT.

See PRESCRIPTION—EASEMENTS—TREES.

[20 Mad. 389

——, s. 2.

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

[19 Bom. 420

——, s. 4.

See CUSTOM.

[16 All. 178
[17 All. 87

EASEMENTS ACT (V OF 1882)—*concld.*

See PRESCRIPTION—EASEMENTS—LAND.
[16 All. 178
[17 All. 87

——, s. 18.

See CUSTOM.
[16 All. 178
[17 All. 87

See PRESCRIPTION—EASEMENTS—LAND.
[16 All. 178
[17 All. 87

EJECTMENT.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—EJECTMENT.
[21 Bom. 154

See CASES UNDER LANDLORD AND TENANT—EJECTMENT.

——, **Liability to.**

See LANDLORD AND TENANT—TRANSFER BY TENANT.
[24 Calc. 212

See MADRAS RENT RECOVERY ACT, S. 12.
[18 Mad. 266

See SERVICE TENURE.
[22 Calc. 938

——, **Suit for.**

See BENGAL TENANCY ACT, S. 155.
[22 Calc. 77

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, S. 48.
[18 Bom. 19

See DECREE—FORM OF DECREE—MORTGAGE.
[20 Bom. 196

See ESTOPPEL—DENIAL OF TITLE.
[19 Bom. 130, 133 note

See EVIDENCE ACT, S. 90.
[20 Bom. 1

See LANDLORD AND TENANT—TRANSFER BY TENANT.
[21 Bom. 195

See LIMITATION ACT, ART. 32.
[24 Calc. 160

See MULTIFARIOUSNESS.
[24 Calc. 831

See ONUS OF PROOF—EJECTMENT.
[19 Bom. 803

See PARTIES—PARTIES TO SUITS—EJECTMENT, SUIT FOR.
[21 Bom. 229
[20 Mad. 375

EJECTMENT—*concluded.*

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[20 Mad. 82

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—RECOVERY OF IMMOVEABLE PROPERTY.
[17 Mad. 216

—Sale by mortgagor of parts of the mortgaged property—Suit for sale by mortgagee without joining the vendees—Subsequent suit to eject mortgagor's vendees—Cause of action—Right of suit.] A mortgagor, who had given a simple mortgage over certain land, sold some of the mortgaged property. The mortgagee, after such sale had taken place, and without making the vendees parties to his suit, brought a suit for sale on his mortgage, and having caused the mortgaged property to be sold, including that portion which had been sold by the mortgagor, purchased it himself. The mortgagee than sued to eject the vendees of the mortgagor:—*Held*, that the suit would not lie, inasmuch as the plaintiff (mortgagee) had at its commencement no title to present possession of that particular portion of the mortgaged property as against anyone. HARGU LAL SINGH *v.* GOBIND RAI.
[19 All. 541

ELECTION.

——, **Order to set aside.**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.
[21 Bom. 279

—— **under will.**

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY.
[20 Bom. 316
[21 Bom. 349

EMBANKMENT, ERECTION OF.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
[18 Mad. 158

ENCROACHMENT.

See LIMITATION ACT, ART. 149.
[19 Mad. 154

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.
[20 Mad. 433

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
[18 Bom. 699

1.—*Injury to property—Contributory act—Tort—Contributory negligence.*] As in the case of contributory negligence, so an act of one party can only be contributory to the injury he complains of, if by the exercise of ordinary care the other

ENCROACHMENT—*concluded.*

party could not have avoided causing the injury. MADHAVA RAU *v.* FERNANDES.

[17 Mad. 368

2.—*Stranger building on land of another—Acquiescence of owner—Delay of owner in suing possession—Form of decree.*] It is well established law in England that if a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. This is also the law in India, with the exception that the party building on the land of another is allowed to remove the building. Delay by the owner in bringing a suit is not in itself sufficient to create an equity in favour of the person spending money on the land so as to deprive the owner of his strict rights. The decree made by the High Court was that the plaintiff should recover the land with liberty to the defendant forthwith to commence to remove his building and to restore the property to the condition in which it was, when he took possession, the same to be completed within one year from date of decree. In default, the plaintiff to be at liberty to remove the building at the expense of the defendant. PREMJI JIVAN BHATE *v.* CASSUM JUMA AHMED.

[20 Bom. 298

ENDOWMENT.

See CASES UNDER ACT XX OF 1863.

See DECREE—CONSTRUCTION OF DECREE—ENDOWMENT.

[17 Mad. 343

[L. R. 21 I. A. 71

See CASES UNDER HINDU LAW—ENDOWMENT.

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[19 Mad. 243

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

See MALABAR LAW—ENDOWMENT.

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO.

[17 Mad. 143

——, Alienation by manager of.

See LIMITATION ACT, s. 10.

[18 Mad. 266

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Mad. 342

[23 Calc. 536

——, Order appointing trustee of.

See APPEAL—ACTS—ACT XX OF 1863.

[19 Mad. 285

ENDOWMENT—*continued.*

——, Suit for dismissal of members of Committee of.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—ACT XX of 1863.

[19 Mad. 498

——, Suit to remove trustee of.

See ACT XX OF 1863, S. 14.

[19 All. 104

See VALUATION OF SUIT—SUITS.

[19 All. 104

1.—*Creation of endowment, Presumption of—Erection of temple—Ownership, Presumption of.*] The mere fact of the owner of land having erected a temple and planted a grove thereon does not of itself, without any further evidence, indicate a dedication to the god and a cessation of the rights of private ownership in respect of such land. DAKHNI DIN *v.* RAHIM-UN-NISSA.

[16 All. 412

2.—*Religious endowment—Property in British India of a temple outside British India—Jurisdiction in suit to declare right to officiate in temple and for share of temple property.*] The plaintiff was a member of a family which had the management, and received the income of, certain property situate in British India belonging to a temple situate at Ashta in the Nizam's territory. Part of the income was devoted to religious services and part to the support of the family. The plaintiff sued to recover by partition his share of the income and for an injunction restraining the defendant from interfering with the plaintiff in celebrating religious worship at the temple when his turn came to officiate. The defendant (his brother) resided at Ashta:—*Held*, that the right to share in the income followed the devolution of the office, and that the Court could not grant the relief prayed for, as the Courts in British India could not execute their decree by putting the plaintiff in possession of his office when his turn came to officiate at the temple which was outside British India. According to Hindu text-writers as regards public endowments, religious offices are naturally indivisible, though modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns, and of allowing alienation within certain restrictions. TRIMBAK RAMKRISHNA RANADE *v.* LAKSHMAN RAMKRISHNA RANADE.

[20 Bom. 495

3.—*Act XX of* 1863, *s.* 14—*Bengal Regulation (XIX of* 1810)—*Civil Procedure Code* (1882), *s.* 539—*Suit to remove trustees of Hindu religious endowment—Right of representative of founder of trust to nominate trustee.*] The Maharaja of *B* in 1862 assigned certain lands situated in Bengal for the maintenance of a temple at Chauria in the Gorakhpur district, and appointed certain trustees of the endowment. Those trustees dealt with the property in a manner inconsistent with the trust by making alienations thereof as if it were

ENDOWMENT—*continued.*

their own private property. In 1893, the representative in title of the original settlor sued in the Court of the District Judge of Gorakhpur to have certain alienations made by the said trustees set aside and the property restored to its original uses, and for the appointment of a new trustee or new trustees in place of the trustees, defendants to the suit:—*Held*, that such a suit was rightly brought under s. 14 of Act XX of 1863, and that it was not essential for the application of that Act that the endowment should ever have been taken under the control of the Board of Revenue. *Ganes Sing* v. *Ramgopal Sing*, 5 B. L. R. Ap. 55; and *Dhurrum Singh* v. *Kissen Singh*, I. L. R. 7 Calc. 767, approved; *Raghubar Dial* v. *Kesho Ramanuj Das*, I. L. R. 11 All. 18, *quoad hoc*, overruled:—*Held*, also, that s. 539 of the Code of Civil Procedure was not applicable to the above suit. *Lakshmandas Parash Ram* v. *Ganpatrav Krishna*, I. L. R. 8 Bom. 365; and *Jawahra* v. *Akbar Husain*, I. L. R. 7 All. 178, referred to:—*Held*, also, that there being no special provision in the endowment for the appointment of trustees, the right of nomination remained vested in the founder of the endowment, and that the right to nominate continued to his heirs. *Gossami Sri Gridhariji* v. *Romanlalji Gossami*, I. L. R. 17 Calc. 3; L. R. 16 I. A. 137, referred to. SHEORATAN KUNWARI *v.* RAM PARGASH.

[18 All. 227

4.—*Trust — Ground for removing hereditary trustee—Mistake by trustee as to true legal position—Appointment of a devasthan committee—Scheme of management.*] A mistake by a hereditary trustee of a *devasthan* as to his true legal position does not of necessity afford a ground for removing him from his post of manager and entrusting it to new hands. The management of a *devasthan* being found to be lax and improvident, but not fraudulent and dishonest, the Court declined to remove the manager, but appointed a *devasthan* committee to supervise and control him, and framed a scheme for the management of the trust. ANNAJI RAGHUNATH GOSAVI *v.* NARAYAN SITARAM.

[21 Bom. 556

5.—*Powers of a Christian congregation to elect under which Bishopric the endowment should be placed in spiritual matters—Effect of a concordat placing the endowment within the territorial jurisdiction of a certain Bishop—Suit for partition of the endowment.*] In the year 1806, a fund was started by a caste of Roman Catholic boatmen in Royapuram for the purpose of supplying the religious wants of the caste, and, in 1829, the Church of St. Peter at Royapuram was erected. The fund was under the control of the Government Marine Board which, in 1830, in consequence of disputes between the headman of the caste, suspended all payment. In 1863, a member of the caste, claiming to be sole surviving headman, brought a suit against Government for a declaration that he was sole surviving headman, and as such entitled to the sole management of the funds then in the hands of Government, which funds the Government paid into Court to the credit of the said

ENDOWMENT—*concluded.*

suit. By the decree in this suit it was declared that the fund in question belonged to the whole body of Roman Catholic boatmen in Royapuram, that it must be devoted to the religious observances of the body, and that it rested with that body to determine whether in spiritual matters the Church should continue under the Vicar Apostolic or the Goanese Bishop of Mylapore. In 1886, a concordat was executed between the Pope of Rome and the King of Portugal, the effect of which was to place St. Peter's Church within the territorial jurisdiction of the Vicar Apostolic. Plaintiffs, who were members of the Goanese party, complained that, having regard to the effect of the concordat of 1886, it would be impossible for their party—even if in a majority—to elect a priest of their own party, and prayed for a division of the fund:—*Held*, that even if this were so, this fact would not justify the Court in taking away from St. Peter's Church part of its endowment. CHINNASAMI MUDALI *v.* ADVOCATE-GENERAL.

[17 Mad. 406

ENGLISH LAW.

——, Application of.

See CIVIL PROCEDURE CODE, S. 102.

[22 Calc. 8

See COMPANY — WINDING UP — CLAIMS ON ASSETS.

[16 All. 53

See DEFAMATION.

[19 Bom. 340

See STATUTES, CONSTRUCTION OF.

[19 Bom. 340

—How far English law is applicable in Calcutta—Law relating to personalty—Term of years—Armenians—Construction of power in deed to invest.] The English law relating to personalty applies to personalty in India held by British subjects and others to whom the English law is applicable. A term of years is therefore personalty in India as it is in England. Armenians in India are subject to the English law. A power contained in a trust-deed to invest Rs. 20,000 "in or upon any real or Government securities, or in or upon any public funds at interest" is of an optional character, and not imperative, and does not alter the character of the original property so as to convert it from personalty into realty. NICHOLAS *v.* ASPHAR.

[24 Calc. 216

ENHANCEMENT OF RENT.

Col.
1. Right to Enhance ... 373

See BENGAL TENANCY ACT, S. 29.

[24 Calc. 895

See BENGAL TENANCY ACT, S. 158.

[21 Calc. 807

See CONTRACT ACT, S. 74.

[22 Calc. 65

ENHANCEMENT OF RENT—*concluded.*

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY —RENT.

[22 Calc. 658

——, Notice of.

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[21 Bom. 394

——, Sanction of Collector to.

See MADRAS RENT RECOVERY ACT, S. 11.

[17 Mad. 43, 50

——, Suit for.

See BENGAL TENANCY ACT, S. 30.

[21 Calc. 986

See EVIDENCE — CIVIL CASES—RENT RECEIPTS.

[24 Calc. 251

See ONUS OF PROOF — ENHANCEMENT OF RENT.

[24 Calc. 251

(1) RIGHT TO ENHANCE.

—Independent taluk formerly part of a zemindari —Decree of 1805*—Bengal Regulation (VIII of* 1793*), ss. 5 and 50—Bengal Tenancy Act,* 1885*, s.* 67.] A decree of the Sudder Diwani Adalut in 1805 declared that a *taluk* was fit to be separated from the zemindari of which it had originally been part according to the provisions of s. 5, Regulation VIII of 1793. The decree directed that, until separation, rent should be paid by the *talukdar* to the zemindar, "according to the *jumma* already assessed upon the *taluk*," this revenue to be, on the separation being effected, deducted from that assessed upon the zemindari. Proceedings with a view to separation then continued, but litigation and delays ensued, with the result that no separation had been effected when these suits were instituted in 1882 and 1885. In these suits, the holders of shares into which the zemindari had been partitioned claimed to enhance the rent on the *taluk:—Held*, that the decree of 1805, acted upon for many years, was conclusive that the *taluk* was not dependent on the zemindari, but an independent one, within s. 50, Regulation VIII of 1793; and that therefore the zemindars had no right of enhancement. Section 67 of the Bengal Tenancy Act, 1885, applies only to rent payable quarterly. HEMANTA KUMARI DEBI *v.* JAGADINDRA NATH ROY.

[22 Calc. 214

[L. R. 21 I. A. 131

EQUITABLE ASSIGNMENT.

See CLAIM TO ATTACHED PROPERTY.

[21 Bom. 287

See CONSIGNOR AND CONSIGNEE.

[21 Bom. 287

EQUITABLE DEFENCE.

See COMPROMISE—CONSTRUCTION AND EFFECT OF COMPROMISE.

[18 Bom. 721

EQUITABLE LIEN.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[23 Calc. 592

EQUITABLE MORTGAGE.

See DEPOSIT OF TITLE-DEEDS.

[17 All. 252

[24 Calc. 348

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[19 All. 76

EQUITY OF REDEMPTION.

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[21 Bom. 226

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EQUITY OF REDEMPTION.

[21 Bom. 226

——, Agreement to sell.

See REGISTRATION ACT, S. 17.

[18 Bom. 396

——, Purchase of.

See DECREE—FORM OF DECREE—MORTGAGE.

[17 All. 48

See LIMITATION ACT, ART. 46.

[18 Bom. 348

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[18 Mad. 153

[20 Mad. 486

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[18 Mad. 153

——, Sale of.

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 22.

[18 Bom. 739

ESCAPE FROM CUSTODY.

See PENAL CODE, S. 186.

[22 Calc. 759

1.—*Penal Code (Act XLV of* 1860*), s.* 244*—Escape where detention is not for an offence.*] An offence was committed in 1866. In 1893 a person of the same name as the offender was arrested, tried, and acquitted. Whilst under arrest, the accused escaped from custody:—*Held*, that he was not liable to conviction under s. 224 of the Penal

ESCAPE FROM CUSTODY—*concluded.*

Code. An escape from custody when such detention is not for an offence is not punishable under that section. GANGA CHARAN SINGH *v.* QUEEN-EMPRESS.

[21 Calc. 337

2.—*Penal Code (Act XLV of* 1860), *s.* 224—*Escape from custody of village officers—Madras Regulation (XI of* 1816), *s.* 5.] On a charge under the Penal Code, s. 224, it appeared that the accused had been apprehended on a hue and cry being raised as he was running away after committing robbery, and that he was handed over to the village Magistrate, and was by him placed in the charge of *taliyaries* for detention till the next morning when he was to be taken to the Police station, and that he escaped from the custody of the *taliyaries:*—*Held*, distinguishing *Queen* v. *Bajjigan*, I. L. R. 5 Mad. 22, that the accused was rightly convicted of the offence charged. QUEEN-EMPRESS *v.* FAKIRA.

[17 Mad. 103

3.—*Penal Code (Act XLV of* 1860), *s.* 224—*Escape from lawful custody.*] The accused, having been legally arrested, was subsequently left unguarded, and he escaped. He was then re-arrested and was tried and convicted under the Penal Code, s. 224:—*Held*, that the conviction was right. QUEEN-EMPRESS *v.* MUPPAN.

[18 Mad. 401

4.—*Penal Code (Act XLV of* 1860), *s.* 224—*Madras Salt Act (Madras Act IV of* 1889), *ss.* 46 *and* 47—*Right to arrest person without warrant in search for contraband salt.*] The Madras Salt Act, 1889, only authorises searches for contraband salt, and arrests of the parties concerned in the keeping of such salt to be made by officers of the Salt Department without search warrant in cases where the delay in obtaining such search warrant will prevent the discovery of such contraband salt:—*Held*, that where the circumstances did not justify the officer in believing that the delay in obtaining a search warrant would prevent the discovery of contraband salt, he had no power to search or arrest persons without such warrant, and the escape by the persons so arrested from custody was no offence within the meaning of s. 224 of the Penal Code. QUEEN-EMPRESS *v.* KALIAN.

[19 Mad. 310

ESTATES PARTITION ACT (BENGAL ACT VIII OF 1876).

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[24 Calc. 725

——, s. 112.

See PENAL CODE, S. 186.

[22 Calc. 286

——, s. 116.

See LIMITATION ACT, ART. 14.

[24 Calc. 149

ESTATES PARTITION ACT (BENGAL ACT VIII OF 1876)—*concluded.*

See PENAL CODE, S. 186.

[22 Calc. 286

——, s. 123.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.

[24 Calc. 887

——, s. 150.

See LIMITATION ACT, ART. 14.

[24 Calc. 149

ESTOPPEL.

		Col.
1.	Denial of Title	... 376
2.	Estoppel by Deeds and other Documents	... 377
3.	Estoppel by Judgment	... 377
4.	Estoppel by Conduct	... 378

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[19 All. 165

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

[24 Calc. 469

See CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUIT.

[23 Calc. 374

See COMPANY — FORMATION AND REGISTRATION.

[19 Mad. 200

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY.

[20 Bom. 316

[21 Bom. 349

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[18 Bom. 66

[16 All. 328

See CASES UNDER RES JUDICATA.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

(1) DENIAL OF TITLE.

1.—*Suit by landlord for possession—Defence denying title—Ejectment, Suit for.*] The plaintiff sued for possession of a certain house, alleging the expiry of the lease (*kabuliat*) on which the defendants held it as tenants. The Mamlatdar dismissed the suit, being of opinion that the plaintiff had no title to the house when he granted the lease, and the house belonged to the defendants when they executed the lease:—*Held*, reversing the decree, that the defendants (tenants) having executed the *kabuliat* could not deny the plaintiff's title as a ground for refusing to give up possession, and the Mamlatdar himself, there-

ESTOPPEL—*continued.*

(1) DENIAL OF TITLE—*concluded.*

fore, could not go into the question. *Parbhudas* v. *Fulba*, I. L. R. 19 Bom. 133 note, distinguished. PATEL KILABHAI LALLUBHAI *v.* HARGOVAN MANSUKH.

[19 Bom. 133

2.—*Mortgage by tenant at fixed rates—Ejectment of mortgagor by zemindar—Suit for redemption against mortgagee in possession of the mortgaged property—Landlord and tenant.*] The rule of law which prohibits a mortgagee or tenant from disputing his mortgagor's or landlord's title does not bar the mortgagee or tenant from showing that the title of his mortgagor or landlord under which he entered has determined. Hence where a tenant at fixed rates, who having mortgaged his fixed rate holding by a usufructuary mortgage and put the mortgagee in possession, was ejected by the zemindar, subsequently sued the mortgagee, who had remained in possession after his mortgagor's ejectment, for redemption, it was *held* that the mortgagee could plead successfully that the mortgagor's interest in the holding had determined by the ejectment of the mortgagor. NAKCHEDI BHAGAT *v.* NAKCHEDI MISR.

[18 All. 329

(2) ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

3.—*Estoppel of judgment-debtor by previous petition—Application to set aside sale in execution of decree not mentioning fraud and irregularity.*] The fact that a judgment-debtor, who petitions to have the sale in execution of the decree against him set aside on the ground of fraud and irregularity, has, in a petition made previous to the sale asking for its adjournment, made no mention of the irregularities relied on does not create an estoppel. *Mahatab Deo* v. *Leelanund Singh*, I. L. R. 7 Calc. 613, followed. RAMAN *v.* KUNHAYAN.

[17 Mad. 304

(3) ESTOPPEL BY JUDGMENT.

4.—*Order rejecting claim under Civil Procedure Code* (1882), *s.* 281—*Parties—Non-joinder of puisne mortgagee in a mortgage suit—Right of redemption—Transfer of Property Act* (*IV of* 1882), *s.* 85—*Claim in execution to mortgage premises.*] A mortgagee sued on his mortgage and obtained a decree against the mortgagor for the principal, together with the interest accrued due thereon, and for the sale of the mortgage premises in default of payment. A second mortgagee, who was not a party to the suit, intervened in execution, alleging that the land was not liable to be attached and sold by reason of his mortgage, and the Court made an order recognising the priority of the decree-holder's lien and giving to the second mortgagee the opportunity of discharging it. No suit was brought to question this order. The first mortgage was not paid off, and the mortgage premises were brought to sale. The purchaser, who was the first mortgagee, now sued for possession of the land, and his claim was resisted by the second mortgagee:—*Held* (1) that the non-joinder of

ESTOPPEL—*continued.*

(3) ESTOPPEL BY JUDGMENT—*concluded.*

the present defendant in the suit on the mortgage constituted no bar to the present suit; (2) that the second mortgagee was estopped from now re-asserting his claim. KRISHNAN *v.* CHADAYAN KUTTI HAJI.

[17 Mad. 17

5.—*Representation by karnavan of members of Malabar tarwad—Decree against karnavan, Effect of—Civil Procedure Code* (1882), *ss.* 13 *and* 30.] Although the members of a *tarwad* or family may, in an irregular fashion, be represented by a *karnavan* of the *tarwad* in a suit, the decree therein does not raise an absolute estoppel against members not actually brought on the record. *Ittiachan* v. *Vellappan*, I. L. R. 8 Mad. 484; and *Sri Devi* v. *Kelu Eradi*, I. L. R. 10 Mad. 79, followed. KOMAPPAN NAMBIAR *v.* UKKARAN NAMBIAR.

[17 Mad. 214

(4) ESTOPPEL BY CONDUCT.

6.—*Representation by person other than party through whom plaintiff claims—Suit for property through prior holder.*] Where a person claims property as the representative of another, the doctrine of estoppel cannot apply to representations made by any one except that other person. RANGA RAU *v.* BHAVAYAMMI.

[17 Mad. 473

7.—*Suit to set aside adoption in which the plaintiff has concurred—Hindu law, adoption.*] The plaintiff, claiming a remote reversionary interest in the estates of a deceased Hindu, sued for a declaration of the invalidity of an adoption made by the widow. It appeared that the plaintiff himself had concurred in it at the time when it took place:—*Held*, that the plaintiff was not estopped from impugning the adoption by reason of his conduct at the time when it took place. GURULINGASWAMI *v.* RAMALAKSHMAMMA.

[18 Mad. 53

8.—*Hindu law, adoption—Treating invalid adoption as effective and subsequently repudiating it—Suit to uphold adoption.*] A childless Hindu widow, aged 19, agreed with the plaintiff's father to adopt the plaintiff, stating that her husband, who died at the age of 12, had given her authority to adopt. Subsequently she adopted the plaintiff and had his *upanayanam* performed in the adoptive family next day, and administered her husband's property as the minor's guardian for about 18 months, when she repudiated the adoption and refused to maintain the plaintiff:—*Held*, that the adoption being invalid on the ground that the widow had not, as a fact, acted under authority from her husband, she was not estopped from denying the adoption by the fact of her having treated it as effective for the period of 18 months. In order that estoppel by conduct may raise an invalid adoption to the level of a valid adoption, there must have been a course of conduct long continued on the part of the adopting family, and the situation of the adoptee in his original family must have become so altered that it would be impossible to restore him to it. *Gopalayyan* v.

ESTOPPEL—*continued.*

(4) ESTOPPEL BY CONDUCT—*continued.*

Raghupatiagyan, 7 Mad. 250. followed. PARVATIBAYAMMA *v.* RAMAKRISHNA RAU.

[18 Mad. 145

9.—*Treating adoption as valid for a long period.*] In a suit to recover possession of certain land to which the plaintiff claimed title as the adopted son of a deceased Saraswati Brahman, it appeared that he had been taken in adoption by the widow of the deceased acting on the authority of her late husband, that *datta homam* was performed subsequently, and that the plaintiff had since been recognized as the adoptive son of the deceased and had acted accordingly during a period of twenty-five years. The defendant was in possession under a claim of title as reversionary heir, the widow having died shortly before suit:—*Held*, on the evidence, that the defendant was estopped from denying the validity of the adoption. SANTAPPAYYA *v.* RANGAPPAYYA.

[18 Mad. 397

10.—*Evidence Act* (*I of* 1872), *s.* 115—*Mistake of law—Acknowledgment of adoption—Effect of recognition of status of adopted son as to property in Native State, on his status as to property in British territory.*] One *G* was possessed of considerable property both in British territory and in the territory of the Gaikwar of Baroda. He died in 1858, leaving three childless widows, *L*, *S* and *B*. Shortly after his death, the plaintiff *K*, who was then a minor, was taken to Baroda by *L*, and, on her representations, as well as those of her co-widows, he was acknowledged by the Gaikwar as their adopted son, and as such entitled to succeed to all the estate and privileges enjoyed by the deceased *G*. For several years afterwards the widows treated the plaintiff as the legitimate heir and successor of *G* in respect of the Baroda property. With regard to the estate in British territory, the widows at first put forward *K* as the adopted son of *G*. On their application a certificate of heirship was issued under Regulation VIII of 1827, declaring that "the Bais were the widow heirs, and the minor *K* the son heir, of the deceased *G*." In one case the widows obtained a decree as guardians of the minor, on a bond executed in favour of *K* as heir to *G*. When the Bombay Summary Settlement Act (II of 1863) was passed, the widows accepted the summary settlement in respect of the *inam* holdings of their deceased husband, and thereupon the holdings were entered in their names in the Government records. Finding themselves secure in the possession of their husband's estate, the ladies now dropped the allegation of adoption and dealt with the property in British territory in their own right, and not as trustees or guardians of the minor *K*. In 1871, *K* sought to have part of the property in British territory transferred to his own name as the adopted son of *G*. The widows resisted this attempt and denied his adoption. In 1881, *K* made a similar attempt, but failed, the Revenue authorities having eventually resolved to leave the question of *K's* title by adoption to be determined by the Civil Court. In 1884 *K* filed the present suit against the widows of

ESTOPPEL—*continued.*

(4) ESTOPPEL BY CONDUCT—*continued.*

G for a declaration of his adoption by *G* and for possession of *G's* estate in British territory. The widows denied the *factum* of the adoption, and disputed its validity. They also contended that the suit was barred by limitation. The Agent for Sardars in the Dekhan, who tried the case, dismissed the suit, holding that the plaintiff's adoption by *G* was not proved, and that the claim was barred by limitation, the widows having been in adverse possession of the property in British territory for more than twelve years. The plaintiff appealed against this decision to the High Court, contending (*inter alia*) that the widows were estopped by their conduct from denying the plaintiff's adoption:—*Held*, that the widows were not estopped. *Per* BIRDWOOD, J.—The fact that the plaintiff was put forward by the widows as *their* adopted son in the Baroda territory did not estop them from disputing the plaintiff's allegation that he was adopted by *G*. Nor was the circumstance that the widows and the plaintiff obtained a joint certificate of heirship to *G* in British territory conclusive as an estoppel. *Per* JARDINE, J.—There was now no estopped (1) because there was nothing to show that the plaintiff had been led to alter his position in life through belief in any misrepresentations made by the widows; and (2) because the widows might have been under the same mistake of law as the plaintiff, *viz.*, that the Gaikwar's recognition of his adoption created a status operative everywhere, as well in British territory as in the Gaikwar's territory. KUVERJI *v.* BABAI.

[19 Bom. 374

11.—*Sale of mortgaged property in execution of a money decree without express notice of mortgage—Omission to declare mortgage at time of sale—Civil Procedure Code* (1882), *s.* 287—*Right of mortgagee to enforce mortgage against the property in hands of purchaser.*] A mortgagee under a registered mortgage-deed obtained a money decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 287 of Civil Procedure Code (Act XIV of 1882), and the auction-purchaser had no actual knowledge of the mortgage. In a suit brought by the mortgagee against the mortgagors and the auction-purchaser to recover the mortgage-debt by sale of the mortgaged property:—*Held*, that the omission to declare the mortgage at the time of the sale could not be treated as an estoppel. DHONDO BALKRISHNA KANITKAR *v.* RAOJI.

[20 Bom. 290

12.—*Rights of purchasers at sale in execution of a mortgage decree—Purchase without notice that mortgagor was only benami-holder for the judgment-debtor.*] The plaintiffs and defendants, either party holding a separate decree against the same estate, had by leave purchased in execution. Both parties claimed the proprietary right and possession, the defendants holding the latter. The first of the decrees in date was the

ESTOPPEL—*concluded.*

(4) ESTOPPEL BY CONDUCT—*concluded.*

plaintiffs' for money, against the representatives of the deceased owner of the property, which before then had been mortgaged to the defendants by his widow. The plaintiffs obtained only the equity of redemption, their purchase having been of the right, title and interest. The mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution, and defended the possession which they obtained :—*Held*, that the defendants, in whose favour the decree had been made upon a *bonâ fide* mortgage, without notice that the mortgagor had been only holding *benami* for her husband, had the better title; that the High Court had rightly disallowed an objection taken by the plaintiffs, that this defence, as distinguished from the defendants' answer that the widow was the real owner, had not been set up or decided in the Court of first instance; and *held*, that the owner, having in his lifetime authorized his wife to hold herself out as proprietor in her own right, could not have succeeded in a suit to disentitle the mortgagees without proving that they either had taken the mortgage with such notice, or that they had been put upon inquiry; that the same principle applied to these plaintiffs who had purchased his right, title and interest; and that they were bound equally with him. *Ramcoomar Coondoo* v. *Macqueen* L. R. I. A. Sup. Vol. 40; 11 B. L. R. 46, referred to and followed, as to the application of estoppel. MAHOMED MOZUFFER HOSSEIN *v.* KISHORI MOHUN ROY.

[22 Calc. 909
[L. R. 22 I. A. 129

13.—*Fraud—Fraudulent representation by minor that he was of age—Contract by minor.*] A minor representing himself to be of full age sold certain property to *A* and executed a registered deed of sale. The deed contained a recital that he was twenty-two years of age :—*Held*, in a suit by him to set aside the sale on the ground of his minority, that he was estopped. GANESH LALA *v.* BAPU.

[21 Bom. 198

"EUROPEANS."

See CRIMINAL PROCEDURE CODE, S. 451.

[16 All. 88

EVIDENCE—CIVIL CASES.

		Col.
1.	Accounts and Account Books	382
2.	Decrees, Judgments and Proceedings in former Suits	383
	(*a*) Generally	383
	(*b*) Decrees and Proceedings not *inter partes*	383
3.	Maps	384
4.	Recitals in Documents	384
5.	Rent Receipts	385
6.	Miscellaneous Documents	385
	(*a*) Registers	385
7.	Secondary Evidence	386
	(*a*) Unstamped and Unregistered Documents	386

EVIDENCE—CIVIL CASES—*continued.*

See KHOTI SETTLEMENT ACT, S. 17.

[18 Bom. 133
[20 Bom. 475

See REGISTRATION ACT, S. 17.

[17 Mad. 275

See REMAND—PROCEDURE ON REMAND.

[19 Mad. 127

See SPECIFIC RELIEF ACT, S. 35.

[18 Bom. 342

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH.

[19 Mad. 485

——, Admissibility of.

See CASES UNDER APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.

[18 Bom. 737

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[19 All. 76

See LIMITATION ACT. S. 19—ACKNOWLEDGMENT OF DEBTS.

[17 All. 198

See MORTGAGE—FORM OF MORTGAGES.

[17 All. 434

See CASES UNDER REGISTRATION ACT, SS. 17, 18 AND 49.

See STAMP ACT, S. 16.

[19 Bom. 635

——, Question of.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIALS.

[24 Calc. 455

——, Secondary evidence.

See STAMP ACT, S. 39.

[17 Mad. 473

(1) ACCOUNTS AND ACCOUNT BOOKS.

1.—*Evidence Act (I of 1872), s. 34—Evidence as to whether hundis are genuine or not—Comparison of handwriting—Entries in account books regularly kept—Tests of correctness of such books—Interest on decree.*] The High Court had reversed the finding of the first Court on an issue which, in effect, was whether certain *hundis* were genuine or false Under s. 34 of Act I of 1872 (The Indian Evidence Act), the plaintiff's account books were produced by the plaintiff as relevant evidence, and were relied on as corroborating direct testimony. The books were tested by reference to entries corresponding with other independent evidence. The Judicial Committee, on the

EVIDENCE—CIVIL CASES—*continued.*

(1) ACCOUNTS AND ACCOUNT BOOKS—*concluded.*

whole evidence, affirmed the decision of the High Court that the *hundis* were genuine. In the decree, which gave interest to its date, they extended the period until payment. JASWANT SINGH *v.* SHEO NARAIN LAL.

[16 All. 157

S. C. TEWARI JASWANT SINGH *v.* LALA SHEO NARAIN LAL.

[L. R. 21 I. A. 6

2.—*Corroborative evidence necessary to render defendant liable upon entries in plaintiffs' books—Evidence Act (I of 1872), s. 34.*] In a suit to recover money due upon a running account, the plaintiffs produced their account-books, which were found to be books regularly kept in the course of business, in support of their claim. One of the plaintiffs gave evidence as to the entries in the account books, but in such a manner that it was not clear whether he spoke from his personal knowledge of the transaction entered in the books, the entries in which were largely in his own handwriting, or simply as one describing the state of affairs that was shown by the books. He was cross-examined, but no questions were asked him to show that he was not speaking as to his personal knowledge:—*Held*, that the evidence given as above should be interpreted in the manner most favourable to the plaintiffs, and might be accepted in support of the entries in the plaintiffs' account books, which by themselves would not have been sufficient to charge the defendants with liability. DWARKA DAS *v.* SANT BAKHSH.

[18 All. 92

(2) DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS.

(*a*) GENERALLY.

3.—*Decree for possession under s. 9, Specific Relief Act (I of 1877)—Subsequent suit "inter partes" for mesne profits—Admissibility in evidence of former decree.*] A decree for possession made by a Court under s. 9 of the Specific Relief Act (I of 1877) in a suit beyond the pecuniary limits of that Court's jurisdiction, although not *res judicata*, is some evidence of dispossession by the defendants in a subsequent suit against the same defendants to recover mesne profits. *Gujju Lall* v. *Fatteh Lal*, I. L. R. 6 Calc. 171; *Brojo Behari Mitter* v. *Kedar Nath Mozumdar*, I. L. R. 12 Calc 580; *Surendra Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdhry*, I L. R. 13 Calc. 352; and *Radha Churn Ghuttack* v *Zumroonissa Khatoon*, 11 W. R. 83, distinguished; *Run Bahadur Singh* v. *Lucho Koer*, I L. R. 1 Calc. 301, referred to. JIAULLAH SHEIKH *v.* INU KHAN.

[23 Calc. 693

(*b*) DECREES AND PROCEEDINGS NOT INTER PARTES.

4.—*Evidence Act (I of 1872), s. 35—Judgments and private documents.*] In a suit for partition of family property, it became necessary for the

EVIDENCE—CIVIL CASES—*continued.*

(2) DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*concluded.*

(*b*) DECREES AND PROCEEDINGS NOT INTER PARTES—*concluded.*

plaintiff to prove that his grandfather had been adopted by *A*, and he tendered in evidence judgments from which it appeared that *A's* brother, who was the grandfather of defendant No. 1, had sued to recover moneys due to *A*, alleging that the adopted son was an infant living under his protection. An adoption of the father of the defendant No. 1 by *D* was also put in issue, and to prove it, defendant No. 1 tendered in evidence decrees in which the alleged adopted son was so described and also other documents (to which neither defendant No. 5, who denied the adoption, nor his father was a party) where the same description was used:—*Held*, that the documents tendered in evidence of the two adoptions above mentioned, respectively, were admissible in evidence. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR.

[18 Mad. 73

5.—*Decrees of competent Courts—Evidence of custom—Matter of public interest.*] The decrees of competent Courts are good evidence in matters of public interest, such as the existence of customs of succession in particular communities. Such decisions form an exception to the general rule, which excludes *res inter alios actæ*. BAI BAIJI *v.* BAI SANTOK.

[20 Bom. 53

(3) MAPS.

6.—*Thakbast map—Right of fishery in tidal navigable river.*] Value as evidence of the *thakbast* map in the decision of a case of right of fishery in a tidal navigable river discussed. *Syam Lal Sahu* v. *Luchman Chowdhry*, I. L. R. 15 Calc. 353; and *Syama Sunderi Dassya* v. *Jogobundhu Sootar*, I. L. R. 16 Calc. 186, referred to. SATCOWRI GHOSH MONDAL *v.* SECRETARY OF STATE FOR INDIA.

[22 Calc. 252

7.—*Evidence Act (I of 1872), ss. 36 and 83—Map made by Deputy Collector for particular purpose—Proof of accuracy of map.*] A map made by a Deputy Collector for the purpose of the settlement of land forming the silted bed of a river is not one which is admissible in evidence under ss. 36 and 83 of the Evidence Act; but it is a map, the accuracy of which must be proved before it can be admitted in evidence. KANTO PRASHAD HAZARI *v.* JAGAT CHANDRA DUTTA.

[23 Calc. 335

(4) RECITALS IN DOCUMENTS.

8.—*Effect on evidence of recitals in instrument of mortgage.*] Recitals in an instrument may be conclusive and are always evidence against the parties who make them, but they are not evidence against third parties. *Brajeshware Peshakar* v. *Budhanuddi*, I. L. R. 6 Calc. 268, referred to. MANOHAR SINGH *v.* SUMIRTA KUAR.

[17 All. 428

EVIDENCE—CIVIL CASES—*continued.*

(4) RECITALS IN DOCUMENTS—*concluded.*

9.—*Untrue recital in bond—Contradiction by obligor allowed.*] In a suit on a bond containing an agreement, by which an insolvent who has obtained his personal but not his final discharge, without notice to the Official Assignee or his other creditors, settles the claim of one creditor, and by which that creditor agrees not to oppose his final discharge, evidence is admissible on behalf of the obligor to prove that a recital in it that all the other creditors had been settled with, was untrue. NAOROJI NUSSERWANJI THOONTHI *v.* SIDICK MIRZA.

[20 Bom. 636

(5) RENT RECEIPTS.

10.—*Rent receipts, Proof of genuineness of—Bengal Tenancy Act (VIII of* 1885), *s.* 50—*Suit for enhancement of rent—Appellate Court, Power of.*] In a suit for enhancement of rent the defendant produced certain *dakhilas* and deposed to having received them on payment of rent:—*Held*, that this was sufficient evidence to prove them:—*Held*, further, that it was perfectly open to the lower Appellate Court, which had to deal with the facts of the case, to say whether taking the receipts, which extended over a number of years, together, and having regard to the fact that the receipts did not specify the years to which the amounts related, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years. SURJA KANTA ACHARJEE *v* BANESWAR SHAHA.

[24 Calc. 251

(6) MISCELLANEOUS DOCUMENTS.

(*a*) REGISTERS.

11.—*Register prepared by a Special Commissioner appointed under the Chota Nagpur Tenures Act (Bengal Act II of* 1869), *Effect to be given to, as evidence—Conclusive nature of such register.*] A register of tenures prepared by a Special Commissioner appointed under Bengal Act II of 1869 (The Chota Nagpore Tenures Act) after it has been confirmed by the Commissioner of the Division, and such confirmation has been duly published in the *Calcutta Gazette*, is conclusive evidence of all matters recorded therein, and it is not open to a Civil Court to hold that, because a Special Commissioner did not rightly understand a decision of the Commissioner, and because the register was not prepared in accordance with such order, it is otherwise than conclusive; nor is a Court competent even to discuss the question whether a Special Commissioner, in preparing such register, rightly appreciated the Commissioner's decision, when his own order has been given effect to by the register prepared, and has been confirmed by the Commissioner under *s.* 25 of the Act. PERTAP UDAI NATH SAHI DEO *v.* MASI DAS.

[22 Calc. 112

EVIDENCE—CIVIL CASES—*continued.*

(7) SECONDARY EVIDENCE.

(*a*) UNSTAMPED AND UNREGISTERED DOCUMENTS.

12.—*Evidence Act (I of* 1872), *s.* 91—*Terms of tenancy proved orally although contained in a document—Landlord and tenant—Lease, Terms of.*] The plaintiffs alleged that in 1866 the defendant's father had let land to their predecessor in title in perpetuity on *fazendari* tenure for building purposes, subject to a certain rent. They complained that the defendant sought to eject them, and they prayed for a declaration that they were entitled to the land in perpetuity, subject only to payment of the yearly rent. In the event of its being held that they were not perpetual tenants, they prayed that the defendant might be ordered to pay them Rs. 7,000, the value of the buildings on the land. The plaintiffs made out a *primâ facie*, case without showing, or its being shown, that there was any agreement or lease. Before the case had concluded, however, a document was produced which was said to be a counterpart of the agreement of letting made in 1866. It was not registered, and was, therefore, inadmissible in evidence. It was not tendered, but it was shown to the defendant in cross-examination, and he denied that it was a genuine document:—*Held*, that the plaintiffs, having made out a *primâ facie* case without betraying the existence of a written contract relating to the subject-matter of the suit, were not precluded from obtaining a decree, even though it afterwards appeared that a written contract had been made. If the defendant intended to rely upon a written contract, it was for him to produce it as part of his evidence. In the present case, as the document was not referred to in the plaint, written statement or issues, and was not before the Court, the evidence should be looked at to ascertain the terms of the tenancy by which the plaintiffs and their predecessors in title held the property. YESHWADABAI *v.* RAMCHANDRA TUKARAM.

[18 Bom. 66

13.—*Suit on unstamped hundi—Stamp Act (I of* 1879), *s.* 34—*Admission of liability by defendant.*] In a suit brought upon two *hundis*, which were inadmissible in evidence for want of impressed stamps, the Judge allowed the claim, holding that the defendants' admissions in their written statement rendered it unnecessary to put the *hundis* in evidence:—*Held*, reversing the decree, that a *hundi* is "acted upon" within the meaning of *s.* 34 of the Stamp Act where a decree is passed on it, whether proved or admitted, and that the Court cannot give effect to it in either case. CHENBASAPA *v.* LAKSHMAN RAMCHANDRA.

[18 Bom. 369

14.—*Unstamped balance of account—Stamp Act (I of* 1879), *s.* 34—*Acknowledgment or admission of liability—Limitation Act, s.* 19.] Though an unstamped acknowledgment cannot be "acted upon" as an acknowledgment of a particular sum being due, still it may be used for the colla-

EVIDENCE—CIVIL CASES—*concluded.*

(7) SECONDARY EVIDENCE—*concluded.*

(*a*) UNSTAMPED AND UNREGISTERED DOCUMENTS—*concluded.*

teral purpose of showing an acknowledgment of an existing liability in respect of goods sold. FATECHAND HARCHAND *v.* KISAN.

[18 Bom. 614

Contra MULJI LALA *v.* LINGU MAKAJI.

[21 Bom. 201

15.—*Insufficiently stamped document—Suit on hathchitta—Right of suit if brought upon an insufficiently stamped document, where the defendant admitted the loan—Suit for money lent—Evidence Act (I of 1872), s. 91.*] In a suit brought in the Court of Small Causes on a *hathchitta* bearing a stamp of one anna, the defendant admitted the loan, but pleaded payment. The Judge coming to the conclusion that the document sued upon was a promissory note, and should have been stamped with a two-anna stamp, refused to admit it in evidence. He also came to the conclusion that the plaintiff had no cause of action independently of the document, and dismissed the suit:—*Held*, that the plaintiff had a cause of action independently of the document:—*Held*, also, that an implied contract to repay money lent always arises from the fact that the money is lent, even though no express promise, either written or verbal, is made to repay it. Therefore, in a case where the defendant admits the loan, and has not repaid it, the plaintiff may maintain an action against him for breach of his implied promise or contract, entirely independent of any security which may have been given for the advance. *Akbar* v. *Sheikh Khan*, I. L. R. 7 Calc. 256, explained; *Golap Chand Marwaree* v. *Mohokoom Kooaree*, I. L. R. 3 Calc. 314, followed. PRAMATHA NATH SANDAL *v.* DWARKA NATH DEY.

[23 Calc. 851

EVIDENCE—CRIMINAL CASES. *Col.*

1. Character ... 388
2. Depositions ... 388
3. Judgment in Civil Suit ... 389
4. Statements to Police-Officers ... 389

See ACCOMPLICE.

[23 Calc. 361

See CRIMINAL TRESPASS.

[19 All. 74

See LOCAL INVESTIGATION.

[21 Calc. 920

See PRACTICE—CRIMINAL CASES—AFFIDAVIT.

[19 Mad. 209

See STOLEN PROPERTY, OFFENCES RELATING TO.

[17 All. 576
[20 Bom. 348

EVIDENCE—CRIMINAL CASES—*contd.*

——, Improper admission of.

See EVIDENCE ACT, S. 167.

[19 Bom. 749

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749

—— Mode of recording.

See CRIMINAL PROCEEDINGS.

[19 Mad. 269

(1) CHARACTER.

1.—*Criminal Procedure Code* (1882), *s.* 117—*Evidence of general repute—Rumours—Security for good behaviour.*] Evidence that there are rumours in a particular place that a man has committed acts of extortion on various occasions, that he has *badmashes* in his employ to assist him, and generally that he is a man of bad character, is not evidence of general repute under s. 117 of the Criminal Procedure Code. Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of good character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character. It cannot be said that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, these rumours are in themselves evidence under s. 117 of the Code. RAI ISRI PERSHAD *v.* QUEEN-EMPRESS.

[23 Calc. 621

(2) DEPOSITIONS.

2.—*Depositions in counter-case.*] The depositions of witnesses given in a counter-case may be used as evidence against them on their trial as accused persons, but such depositions could only be evidence against the persons making them. *Queen-Empress* v. *Gopal Dass*, I. L. R. 3 Mad. 271; and *Queen-Empress* v. *Ganu Sonba*, I. L. R. 12 Bom. 440, followed. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[21 Calc. 392

3.—*Deposition in previous inquiry under Companies Act (VI of 1882), ss. 162 and 163—Accused tried jointly.*] A deposition on oath made by one of several accused, as a witness in a previous inquiry under ss. 162 and 163 of the Indian Companies Act (VI of 1882), was admitted in evidence against himself only, and not against the other accused. QUEEN-EMPRESS *v.* MOSS.

[16 All. 88

EVIDENCE—CRIMINAL CASES—*contd.*

(2) DEPOSITIONS—*concluded.*

4.—*Criminal Procedure Code* (1882), *s.* 288—*Previous statements of witnesses, Admissibility of.*] Although previous statements made by witnesses may be used, under s. 145 of the Evidence Act, for the purpose of contradicting statements made by them subsequently at the trial of an accused person, they cannot, if they have been made in the absence of the accused, be treated as independent evidence of his guilt or innocence; s. 288 of the Criminal Procedure Code will not avail anything for this purpose. ALIMUDDIN *v.* QUEEN-EMPRESS.

[23 Calc. 361

(3) JUDGMENT IN CIVIL SUIT.

5.—*Admissibility in criminal prosecutions of judgment in a civil suit.*] *Per* RAMPINI, J.—A judgment in a civil action cannot be given in evidence in a criminal prosecution for establishing the truth of the facts upon which it is rendered. Whatever may be the nature of the decision of the Civil Court, the Magistrate ought to decide the question of the accused's criminality by himself. *Per* GHOSE, J.—The decision in a civil suit would be admissible in evidence in a criminal case, if the parties are substantially the same, and the issues in the two cases are identical. RAJ KUMARI DEBI *v.* BAMA SUNDARI DEBI.

[23 Calc. 610

(4) STATEMENTS TO POLICE-OFFICERS.

6.—*Statement as complainant while in custody as an accused person.*] If a person while in custody as an accused gives information to the Police as complainant in another case, his statements as such informant cannot be used as evidence against him on his trial. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[21 Calc. 392

7.—*Criminal Procedure Code* (1882), *ss.* 161 *and* 162—*Statements made to Police-officer in the course of an investigation—Use of notes of such statements at trial before the Court of Session—Police diaries—Practice.*] A Police-officer's notes of statements made to him in the course of an investigation and recorded by him under s. 161 of the Code of Criminal Procedure should, if used at all at the subsequent trial, be used only after proper proof of them, and of the circumstances under which they were recorded, and under the direct sanction of the presiding Judge. Copies of such notes should not be given without question, and, as a matter of course, to the accused or his Counsel. QUEEN-EMPRESS *v.* NASIR-UD-DIN.

[16 All. 207

8.—*Criminal Procedure Code* (1882), *ss.* 161 *and* 162—*Use at trial in Sessions Court of statements made to Police-officer investigating case.*] Though, speaking generally, statements, other than dying declarations, made to a Police-officer in the course of an investigation under Chap. XIV of the Code of Criminal Procedure

EVIDENCE—CRIMINAL CASES—*contd.*

(4) STATEMENTS TO POLICE-OFFICERS—*continued.*

may be used at the trial in favour of an accused person, such statements can only be so used when they are legally brought as evidence before the Court, that is to say, a witness having been cross-examined as to a statement, it may be shown by the evidence of the Police-officer that he did make a statement favourable to the accused, which the witness denies having made; and if the statement was at the time reduced into writing by the Police-officer, he would be allowed to refresh his memory by referring to it, but the written statement itself, when the statement has been reduced into writing (according to the section, it must not be signed by the person making it), cannot be used as direct evidence of what was stated by the witness to the Police-officer. QUEEN-EMPRESS *v.* TAJ KHAN.

[17 All. 57

9.—*Criminal Procedure Code* (1882), *ss.* 161, 162, 167 *and* 172—*Police diaries—What the diary should or should not contain—Statements recorded under s.* 161 *of the Code of Criminal Procedure—Use which may be made of the special diary by the Court—Sessions Judge, Power of—Right of the accused or his agent to see the special diary—Evidence Act* (*I of* 1872), *ss.* 39, 145 *and* 161.] A Sessions Judge, although he has power in any particular case which is before him to send for the Police diaries connected with the case, if he thinks it necessary to peruse them, has no authority to issue a general order that in every case committed for trial to the Court of Session, and in every criminal appeal, the Police diaries shall be submitted to the Court simultaneously with the Magistrate's record of the case. Such an order is illegal. In no case is an accused person entitled as of right to a copy of any statement recorded by a Police-officer in the special diary prepared under the authority of s. 172 of the Code of Criminal Procedure. The special diary may be used by the Court to assist it in the inquiry or trial by suggesting means of further elucidating points which need clearing up, and which are material for the purpose of doing justice between the Crown and the accused; but entries in the special diary cannot by themselves be taken as evidence of any date, fact or statement therein contained. The special diary may also be used by the Court for the purpose of contradicting the Police-officer who made it, and the special diary may be used by the Police-officer who made it, and by no witness other than such officer, for the purpose of refreshing his memory. If the special diary is used by the Court to contradict the Police-officer who made it, or by the Police-officer who made it to refresh his memory, the accused person or his agent has a right to see that portion of the diary which has been referred to for either of these purposes, that is to say, the accused person or his agent is entitled to see the particular entry which has been referred to, and so much of the diary as, in the opinion of the Court, is necessary in that particular matter to the full understanding of particular entry so

EVIDENCE — CRIMINAL CASES—*concluded.*

(4) STATEMENTS TO POLICE-OFFICERS—*concluded.*

used, but no more. So *held* by the Full Bench. *Per* EDGE, C.J., KNOX, BLAIR, and BURKITT, JJ.—A Police-officer investigating a case may lawfully reduce into writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under s. 161 of the Code of Criminal Procedure, and if he does so, his record of such statement is part of the special diary and is just as much privileged as any other entry in the diary. All statements made under s. 161 of the Code of Criminal Procedure to a Police-officer, and reduced into writing by him should be reduced into writing in the special diary and not elsewhere. *Per* BANERJI, J., and AIKMAN, J.—Statements recorded under s. 161 of the Code of Criminal Procedure by a Police-officer making an investigation were not intended by the Legislature to be entered in the special diary, and if they are so entered, do not form an integral part of the diary and are not privileged, but the accused person or his agent is entitled to see them. A mere summary, however, of facts ascertained by an investigating officer from persons examined by him, not being a report of their actual statements, may properly find a place in the special diary. The following cases were referred to:—*Empress* v. *Kali Churn Chunari*, I. L. R. 8 Calc. 154; *Kallu* v. *Queen-Empress*, 29 Panj. Rec. Cr. 55; *Queen-Empress* v. *Nasir-ud-din*, I. L. R. 16 All. 207; *Queen-Empress* v. *Jhubboo Mahton*, I. L. R. 8 Calc. 739; *In the matter of Mahomed Ali Haji* v. *Queen-Empress*, I. L. R. 16 Calc. 612 note; *Bikao Khan* v. *Queen-Empress*, I. L. R. 16 Calc. 110; *Sheru Sha* v. *Queen-Empress*, I. L. R. 20 Calc. 642; *Queen-Empress* v. *Rudr Singh*, Weekly Notes, All. 1896, 120; and *Reg* v. *Uttamchand Kapurchand*, 11 Bom. 120. QUEEN-EMPRESS *v.* MANNU.

[19 All. 390

EVIDENCE—PAROL EVIDENCE. *Col.*

1. Varying or Contradicting Written Instruments ... 391

See LIMITATION ACT, s. 19.

[17 All. 198

See MORTGAGE—FORM OF MORTGAGES.

[19 All. 434

(1) VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

1.—*Evidence Act* (*I of* 1872), *s.* 92—*Oral evidence to show that an agreement in writing to sell is only wager.*] Oral evidence is admissible to show that an agreement in writing to sell is really only an agreement by way of wager. (*See* Evidence Act, s. 92.) *Anupchand Hemchand* v. *Champsi Ugerchand*, I. L. R. 12 Bom. 585, followed; *Juggernauth Sew Bux* v. *Ram Dyal*, I. L. R. 9 Calc. 791, dissented from. ESHOOR DOSS *v.* VENKATASUBBA RAO.

[17 Mad. 480

EVIDENCE — PAROL EVIDENCE—*continued.*

(1) VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

2.—*Evidence Act* (*I of* 1872), *s.* 92—*Evidence to show manner in which consideration was agreed to be paid.*] Section 92 of the Indian Evidence Act, 1872, will not debar a party to a contract in writing from showing, notwithstanding the recitals in the deed, that the consideration specified in the deed was not in fact paid as therein recited, but was agreed to be paid in a different manner. *Hukum Chand* v. *Hira Lal*, I. L. R. 3 Bom. 159; *Lala Himmat Sahai Singh* v. *Llewhellen*, I. L. R. 11 Calc. 486; and *Ram Bakhsh* v. *Durjan*, I. L. R. 9 All. 392, referred to. INDARJIT *v.* LAL CHAND.

[18 All. 168

3.—*Subsequent written agreement to abate rent—Variation of lease—Evidence Act* (*I of* 1872), *s.* 92—*Form of decree.*] In the year 1879, the plaintiff granted a lease of certain lands to the father of the defendants. In May, 1889, he agreed in writing to allow the defendants an abatement of rent to the extent of Rs. 100 per annum. This agreement was not registered, but was stated in the plaint in a previous suit brought by the plaintiff. He subsequently brought a suit against the defendants for the recovery of the entire amount of the original rent:—*Held*, that the defendants could rely on the agreement, and that s. 92 of the Evidence Act (I of 1872) did not apply to it:—*Held*, therefore, varying the order of the District Judge, that the decree for the entire amount of the original rent must be set aside, and a decree made for the amount of rent due at the reduced rate. SATYESH CHUNDER SIRCAR *v.* DHUNPUL SINGH.

[24 Calc. 20

4.—*Evidence Act* (*I of* 1872), *ss.* 92 *and* 94—*Evidence to show language of document not meant to apply to existing facts—Evidence contrary to submission to arbitration.*] An executor having propounded a will, and applied for probate, a caveat was filed denying the execution of the alleged will, and the matter was duly registered as a suit. The executor and the caveatrix subsequently referred "the dispute" to arbitration, signing a submission paper, which was as follows:—"To Bhangsali Kalidas Ramji. Written by us the undersigned. By this instrument we give to you in writing as follows:—In the matter of an application presented by Ghellabhai Atamaram Tambuwala to obtain 'power' (probate) from the High Court for the administration and enjoyment between us two persons of the property of Bai Godawari, widow of Darji (tailor) Bhowan Deva Dave, I, Nandubai, the wife of Mulji Mala, having raised an objection, have got a caveat registered in the High Court. In the matter thereof, we the said plaintiff (and) defendant have appointed you an arbitrator to bring about a settlement of the said dispute. As to whatever award you may make and give on arriving at a decision, the same is to be agreed to and abided by us two persons. In this matter we each other agree and consent to act according to your

EVIDENCE — PAROL EVIDENCE — *concluded.*

(1) VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*concluded.*

'award.' This submission paper we of our free will and pleasure and in sound mind and consciousness have made and delivered after having read and understood the same. It is agreed to and approved of by us, and our heirs and representatives in Court (and) the Darbar, Bombay. The English date, the 30th of October in the year 1893." Before the arbitrator the parties were represented by solicitors, witnesses were called and examined, and the arbitrator made an award finding that the alleged will had not been executed. The executor nevertheless subsequently proceeded with his application for probate. The caveatrix contended that he was bound by the award. He alleged that the parties had never really intended to refer the question of the execution of the will to arbitration, and tendered evidence to prove this:—*Held*, on appeal (FARRAN, C. J., and STRACHEY, J.) that the evidence was admissible. The language of the submission paper was not so plain in itself, nor did it apply so accurately to existing facts, as to prevent the evidence being given—s. 94 of the Evidence Act (I of 1872). GHELLABHAI ATMARAM *v.* NANDUBAI.

[21 Bom. 335

Reversing same case in Court below (CANDY, J.), where it was decided on other grounds. GHELLABHAI ATMARAM *v.* NANDUBAI.

[20 Bom. 238

EVIDENCE ACT (I OF 1872).

———, s. 9.—*Copy of proceeding anterior to suit containing mention of the descent of one of the parties to the suit—Document showing parentage of party—Proof of pedigree—Civil Procedure Code, s. 568.*] One of the questions in issue in a suit as to the pedigree of a certain family being whether one *G* was son of *B S*, or of one *M S* belonging to a totally different family from that of *B S*, an attested copy of a *rubkar* in some proceedings long anterior to the suit was tendered in evidence, in which *rubkar G* was described as the son of *B S*:—*Held*, that the *rubkar* was admissible in evidence under the provisions of s. 9 of Act I of 1872. RADHAN SINGH *v.* KUARJI DICHHIT.

[18 All. 98

———, s. 13.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.

[23 Calc. 179

———, ss. 17 and 18.—*Horoscope — Admission.*] A horoscope, which had been a public record from a period *ante litem motam*, was relied upon by the defendants in the present suit, and was put in as an 'admission' under the Indian Evidence Act, ss. 17 and 18, and was *held* to be admissible in evidence to prove the plaintiff's age. *Ram Narain Kalia* v. *Monee Bibee* I. L. R. 9 Calc. 613; and *Satis Chunder Mukhopadhya* v. *Mohendro Lal Pathuk*, I. L. R. 17 Calc. 849, distinguished. GOUNDAN *v.* GOUNDAN.

[17 Mad. 134

———, s. 18.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[19 All. 76

———, s. 21.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[19 All. 76

———, s. 24.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

———, s. 25.

See CONFESSION — CONFESSIONS TO POLICE-OFFICERS.

[19 Bom. 363

———, s. 26.

See CONFESSION — CONFESSIONS TO POLICE-OFFICERS.

[19 Bom. 363
[20 Bom. 795

See CONFESSION — STATEMENTS TO OTHERS THAN POLICE-OFFICERS WHILE IN CUSTODY.

[20 Bom. 165

———, s. 30.

See CONFESSION — CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

See CASES UNDER CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

1.—s. 32.—*Evidence proving title by inheritance to raj estates—Proof of pedigree—Estate held as separate under the Hindu law.*] A raj estate was claimed by the appellant as the nearest agnatic kinsman of the last Raja in possession, who had died without male issue, but leaving a widow, and a daughter by her, both of whom died before this suit. The claimant, to prove his title, relied upon a pedigree, not stated in any document produced that had existed in the family before this suit. The genealogy on which he claimed was, however, identical with one which his father had more than once asserted, alleging title to two *mouzahs* of the raj estate. The Raja, called upon to answer in proceedings at settlement, had not given a direct denial to the alleged relationship. On the contention that there were steps in the pedigree as to which the evidence adduced did not include proof of statements made by a deceased person who had means of knowledge, or proofs of other statements within s. 32 of the Indian Evidence Act (I of 1872), and as to which the evidence was insufficient:—*Held*, that the evidence taken altogether, oral

EVIDENCE ACT (I OF 1872)—*continued.*

and documentary, had been sufficient to prove that the appellant was related to the deceased Raja, as he had claimed to be, and that the appellant was, as heir to him, entitled to inherit the raj estates on the widow's death; this opinion being founded on the documentary evidence. BEJAI BAHADUR SINGH *v.* BHUPINDAR BAHADUR SINGH; BEJAI BAHADUR SINGH *v.* KOUNSAL KISHORE PRASAD.

[17 All. 456

[L. R. 22 I. A. 139

2.—**s. 32, cl. (5).**—*Statements as to existence of relationship—Proof of age and order of birth of children.*] Case in which the plaint in a former suit verified by a deceased member of the family, and as such having special means of knowledge, was held admissible under s. 32, sub-section 5, of the Evidence Act (I of 1872), to prove the order in which certain persons were born and their ages. DHANMULL *v.* RAM CHUNDER GHOSE.

[24 Calc. 265

3.—**s. 32, cl. (6).**—*Statement in will—Words not purporting or operating to extinguish an interest in the present or in future—Registration Act (III of 1877), s. 17, cl. (b).*] Section 17, cl. (*b*), of the Registration Act (III of 1877), does not render a passage in a will inadmissible in evidence if the words of it do not purport or operate to extinguish an interest in the present or in future, but state only past facts. Such a statement would, if proved, be admissible also under s. 32, cl. 6, of the Indian Evidence Act (I of 1872). CHAMANBU JAVJE MAHOMED ALI BOHORI *v.* MULTANCHAND SHIVRAM.

[20 Bom. 562

——, **s. 33.**

See COMMISSION—CRIMINAL CASES.

[19 Bom 749

——, **s. 33.**—*Deceased witness—Criminal trial, Deposition in, Admissibility of, in civil suit.*] A prosecution was instituted by *S* against *N* at the instance, and, on behalf of *F*, for criminal trespass in respect of a certain house, and on his own behalf for assault and insult. *S* gave evidence at the trial in support of these charges. *F* subsequently brought a civil suit against *N* for possession of the same house under s. 9 of the Specific Relief Act. *S* died before the institution of the civil suit. At the trial of the civil suit, the deposition of *S* in the Criminal Court was tendered by *F* as evidence on the issue of possession:—*Held*, that *S* being dead, and the proceedings being between the same parties, and the issues being substantially the same, the deposition of *S* was admissible. FOOLKISSORY DASSEE *v.* NOBIN CHUNDER BHUNJO.

[23 Calc. 441

——, **s. 34.**

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

[16 All. 157

[L. R. 21 I. A. 6

[18 All. 92

EVIDENCE ACT (I OF 1872)—*continued.*

——, **s. 35.**

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES.

[18 Mad. 73

1.—**s. 35.**—*Public record—Admissibility of evidence—Teiskhana paper—Bengal Regulation (XII of 1817), s. 16.*] The *teiskhana* paper kept by *patwaris* under s. 16 of Bengal Regulation (XII of 1817) is not a public register or record within the meaning of s. 35 of the Evidence Act, and is not admissible as evidence under that section. *Baijnath Singh* v. *Sukhu Mahton*, I. L. R. 18 Calc. 534; and *Merick* v. *Wakley*, 8 A. & E. 170, referred to. SAMAR DASADH *v.* JUGGUL KISHORE SINGH.

[23 Calc. 366

2.—**s. 35.**—*Certificate of guardianship—Evidence of minority.*] A certificate of guardianship is not evidence of minority when the question of minority is in issue. *Satis Chunder Mukhopadhya* v. *Mahendro Lal Pathuk*, I. L. R. 17 Calc. 849, followed. GUNJRA KUAR *v.* ABLAKH PANDE.

[18 All. 478

3.—**s. 35.**—*Statements of fact by Settlement Officer in record of case—Public record, Entries in.*] Statements of facts made by a Settlement Officer in the column of remarks in the *dharepatrak*, but not his remarks for the same, even though they may consist of statements of collateral facts which it was no part of his duty to inquire into, are admissible in evidence as being entries in a public record stating facts, and made by a public servant in the discharge of his official duty, within the meaning of s. 35 of the Evidence Act (I of 1872). MADHAVRAO APPAJI SATHE *v.* DEONAK.

[21 Bom. 695

——, **s. 36.**

See EVIDENCE—CIVIL CASES—MAPS.

[23 Calc. 335

——, **s. 40.**

See KHOTI SETTLEMENT ACT, s. 17.

[20 Bom. 475

——, **s. 42.**—*Judgment as to transferability of tenures in adjoining villages—Evidence of custom or usage.*] In a suit by the landlords to avoid the sale of an occupancy holding in their *mouzah* and eject the purchaser thereof, one of the questions was as to the existence of a custom or usage under which the ryot was entitled to sell such a holding:—*Held*, that a judgment of the High Court as to the transferability of similar tenures in an adjoining village of the same *pergunnah* is admissible as evidence of such usage under s. 42 of the Evidence Act. DALGLISH *v.* GUZUFFER HASSAIN.

[23 Calc. 427

EVIDENCE ACT (I OF 1872)—*continued.*

——, s. 44.

See INSOLVENT ACT, s. 9.

[21 Bom. 205

——, s. 48.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[23 Calc. 427

——, s. 68.—*Unattested document—Mortgage—Transfer of Property Act (IV of 1882), s. 59—Inadmissibility of the unattested document in evidence to prove the debt.*] A mortgage for more than Rs. 100 which has been prepared and accepted, but which is not attested, is invalid, and it cannot be used in proof of a personal covenant to pay, being excluded by s. 68 of the Evidence Act. MADRAS DEPOSIT AND BENEFIT SOCIETY *v.* OONNAMALAI AMMAL.

[18 Mad. 29

——, s. 74.

See STAMP ACT, SCH. I, ART. 22.

[19 All. 293

——, s. 74.—*Public documents—Evidence Act, s. 76—Right of accused person to inspect and have copies of Police reports—Criminal Procedure Code* (1882), *ss.* 157, 168 *and* 173.] *Held* by the Full Bench (SUBRAMANIA AYYAR, J., *dissentiente*)—Reports made by a Police-officer in compliance with ss. 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person is not entitled, before trial, to have copies of such reports:—*Held* by COLLINS, C. J., and BENSON, J.—The same rule applies to reports made by a Police-officer in compliance with s. 173 of the Criminal Procedure Code:—*Held*, by SHEPHARD and SUBRAMANIA AYYAR, JJ.—Reports made by a Police-officer in compliance with s. 173 of the Criminal Procedure Code are public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person, being a person interested in such documents, is entitled by virtue of s. 76 of the Indian Evidence Act to have copies of such reports before trial. QUEEN-EMPRESS *v.* ARUMUGAM.

[20 Mad. 189

——, s. 76.

See s. 74.

[20 Mad. 189

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

[23 Calc. 950

See STAMP ACT, SCH. I, ART. 22.

[19 All. 293

——, s. 77.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

[23 Calc. 950

EVIDENCE ACT (I OF 1872)—*continued.*

——, s. 78.

See STAMP ACT, SCH. I ART. 22.

[19 All. 293

——, s. 83.

See EVIDENCE—CIVIL CASES—MAPS.

[23 Calc. 335

——, s. 90.—*Ancient documents, Proof of—Landlord and tenant—Suit for ejectment.*] In a suit for ejectment brought in 1894 the defendant contended that he held the land on permanent *fazendari* tenure, and produced a document, dated 1848, by which his predecessor was given permission to build upon the land. The plaintiff (landlord), however, produced the counterparts of a subsequent lease to the same tenant (defendant's predecessor), dated 1851, which created a monthly tenancy, and of a later one to the defendant himself, dated 1859, creating a yearly tenancy determinable on a month's notice, under which provision this suit was brought. The defendant denied that he had executed this document, and contended that it was not proved. The lower Court held that these documents were admissible as ancient documents, and relying upon them passed a decree for the plaintiff. On appeal, *held*, confirming the decree, that, having regard to the circumstances, the documents must be held proved, and the plaintiff was entitled to recover possession of the land. HUSAIN *v.* GOVARDHANDAS PARMANANDAS.

[20 Bom. 1

——, s. 91.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE — UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 66

[23 Calc. 851

——, s. 92.

See CASES UNDER EVIDENCE — PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

——, s. 94.

See EVIDENCE — PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[21 Bom. 335

——, s. 106.

See PENAL CODE, s. 373.

[22 Calc. 164

——, s. 112.

See WITNESS — CIVIL CASES—PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

[18 Bom. 468

——, s. 114.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 11.

[20 Bom. 732

EVIDENCE ACT (I OF 1872)—*continued.*

See ONUS OF PROOF — DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

[20 Bom. 367

——, s. 115.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[19 Bom. 374

——, s. 118.

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

[18 Bom. 468

——, s. 126.

See PRIVILEGED COMMUNICATION.

[18 Bom. 263

——, ss. 129—131.

See s. 132.

[21 Calc. 392

1.—s. 132.—"*Compelled*"—*Compelling witness to answer questions.*] The word "compelled" in the proviso to s. 132 of the Evidence Act (I of 1872) applies only where the Court has compelled a witness to answer a question, and not to a case where the witness has not asked to be excused from answering a question, but gives his answer without any claim to have himself excused. QUEEN-EMPRESS *v.* MOSS.

[16 All. 88

2.—s. 132, and ss. 129, 130 and 131.—*Compelling witness to answer questions.*] The mere subpœnaing of a witness or ordering him to go into the witness-box does not compel him to give any particular answer or to answer any particular question. The words "shall be compelled to give" in s. 132 of the Evidence Act, apply to pressure put upon a witness after he is in the box, and when he asks to be excused from answering a question. The wording of ss. 129, 130, 131, 132 and 148 of the Evidence Act compared and discussed. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[21 Calc. 392

——, s. 137.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[21 Calc. 401

——, s. 145.

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[19 All. 390

——, s. 161.

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[19 All. 390

—— s. 165.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[24 Calc. 288

EVIDENCE ACT (I OF 1872)—*concluded.*

——, s. 167.—*Evidence improperly admitted—Power of High Court on appeal—Power to deal with verdict of jury—New trial.*] The provisions of s. 167 of the Evidence Act (I of 1872) apply to criminal trials by jury. When part of the evidence, which has been allowed to go to the jury, is found to be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under s. 167 of the Indian Evidence Act (I of 1872) or to quash the verdict and order a retrial. The law as settled in England by the *Queen* v. *Gibson*, L. R. 18 Q. B. D. 537, and as stated by the Privy Council in *Makin* v. *Attorney-General of New South Wales*, L. R. (1894), A. C. 57, with reference to the granting of new trials where evidence has been improperly admitted, does not apply to India. *Wafadar Khan* v. *Queen-Empress*, I. L. R. 21 Calc. 955, not followed. QUEEN-EMPRESS *v.* RAMCHANDRA GOVIND HARSHE.

[19 Bom. 749

EXAMINATION OF ACCUSED.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[21 Calc. 642

[21 Bom. 495

See FALSE EVIDENCE—GENERALLY.

[19 All. 200

EXCHANGE, RATE OF.

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

[23 Calc. 357

EXECUTION OF DECREE.

		Col.
1.	Effect of Change of Law pending Execution	... 404
2.	Proceedings in Execution	... 407
3.	Application for Execution and Power of Court	... 407
4.	Orders and Decrees of Privy Council	411
5.	Decree to be Executed after Appeal or Review	... 412
6.	Notice of Execution	... 414
7.	Transfer of Decree for Execution, and Power of Court as to Execution out of its Jurisdiction	... 414
8.	Execution by Collector	... 416
9.	Mode of Execution—	... 416
	(*a*) Declaratory Decrees	... 416
	(*b*) Joint Property	... 416
	(*c*) Maintenance	... 418
	(*d*) Mortgage	... 418
	(*e*) Partition	... 420
	(*f*) Possession	... 420
	(*g*) Principal and Surety	... 421
10.	Execution by and against Representatives	... 421
11.	Joint Decrees, Execution of, and Liabilities under	... 424
12.	Striking off Execution Proceedings	425

EXECUTION OF DECREE—*continued.*

See CASES UNDER APPEAL—EXECUTION OF DECREE.

See ATTACHMENT—ALIENATION DURING ATTACHMENT.
[17 Mad. 58

See CASES UNDER CIVIL PROCEDURE CODE, s. 244.

See CIVIL PROCEDURE CODE, s. 257A.
[17 Mad. 382

See CIVIL PROCEDURE CODE, s. 357.
[19 All. 144

See COLLECTOR.
[16 All. 1

See GHATWALI TENURE.
[23 Calc. 873

See HINDU LAW—DEBTS.
[19 All. 26

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.
[18 Mad. 338

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.
[19 All. 235

See MAMLATDAR, JURISDICTION OF.
[18 Bom. 449

See MAMLATDARS COURTS ACT, s. 17.
[19 Bom. 675

See MONEY PAID UNDER DECREE.
[17 Mad. 82

See MUNSIF, JURISDICTION OF.
[19 Mad. 445

See PAUPER SUIT—SUITS.
[18 All. 419

—— **against property not covered by decree.**

See MALABAR LAW—JOINT FAMILY.
[18 Mad. 451, 452 note

See SALE IN EXECUTION OF DECREE—INVALID SALES—EXECUTION AGAINST PROPERTY NOT COVERED BY DECREE.
[18 Mad. 451, 452 note

——, **Application for.**

See BENGAL TENANCY ACT, SCH. III, ART. 6.
[21 Calc. 387
[22 Calc. 644

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[16 All. 26
[18 All. 34

EXECUTION OF DECREE—*continued.*

See CIVIL PROCEDURE CODE, s. 230.
[18 All. 49, 482

See COURT-FEES ACT, s. 11.
[24 Calc. 173

See LIMITATION ACT, s. 14.
[18 Bom. 734

See LIMITATION ACT, ART. 178.
[16 All. 237
[17 All. 39

See CASES UNDER LIMITATION ACT, ART. 179.

See PRACTICE — CIVIL CASES — PARTY ATTAINING MAJORITY.
[22 Calc. 270

See CASES UNDER SURETY—ENFORCEMENT OF SECURITY.

——, **Application for, Dismissal of.**

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
[21 Calc. 784
[L. R. 21 I. A. 89
[18 Mad. 131

——, **Application for, Objection to, by person not party to decree.**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[19 Bom. 544

——, **Application to restrain.**

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.
[18 Mad. 338
[23 Calc. 351

——, **Change of law during.**

See SALE FOR ARREARS OF RENT—INCUMBRANCES.
[22 Calc. 364

——, **Mode of.**

See DECREE — FORM OF DECREE — POSSESSION.
[18 All. 440

——, **Order in.**

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.
[19 Mad. 54

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS — GENERAL CASES.
[18 All. 481

——, **Order in, concurrent by two Courts.**

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.
[19 Bom. 539

EXECUTION OF DECREE—*continued.*

——, Order interfering with.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[17 All. 485

—— pending appeal.

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.

[21 Calc. 989
[22 Calc. 434

See RESTITUTION OF RIGHTS BY MOTION.

[21 Calc. 340
[19 All. 136

—— satisfied out of Court.

See PENAL CODE, S. 210.

[23 Calc. 971

——, Stay of execution.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

[19 Bom. 10
[19 Mad. 140

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[16 All. 496

See LIMITATION ACT, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.

[17 All. 425

See PRIVY COUNCIL, PRACTICE OF—STAY OF EXECUTION PENDING APPEAL.

[22 Calc. 1
[L. R. 21 I. A. 170

——, Stay of execution, Order refusing.

See APPEAL—ORDERS.

[20 Mad. 366

——, Step in aid of.

See CASES UNDER LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

——, Striking off proceedings in.

See APPEAL—ORDERS.

[17 All. 243

——, Suit for land wrongly taken in.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[22 Calc. 483

——, Suit to restrain.

See FRAUD—EFFECT OF FRAUD.

[18 Mad. 378
[20 Mad. 323

EXECUTION OF DECREE—*continued.*

——, Transfer for execution.

See CIVIL PROCEDURE CODE, S. 244—QUESTION IN EXECUTION OF DECREE.

[24 Calc. 473

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

[18 All. 437

See LIMITATION ACT, ART. 122.

[24 Calc. 473

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[22 Calc. 375

See LIMITATION ACT, ART. 180.

[22 Calc. 921

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[19 Bom. 216

(1) EFFECT OF CHANGE OF LAW PENDING EXECUTION.

1.—*Alteration in procedure—Retrospective effect of Act—Construction of statutes.*] Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings. HAJRAT AKRAMNISSA BEGAM *v.* VALIULNISSA BEGAM.

[18 Bom. 429

BALKRISHNA PANDHARINATH *v.* BAPU YESAJI.

[19 Bom. 204

2.—*Civil Procedure Code* (1882), *s.* 310*A*—*Civil Procedure Code Amendment Act* (*V of* 1894), *s.* 2—*Construction of Statute—Act creating new rights, Effect of—Sale in execution of decree held after Act V of* 1894 *came into operation, the execution proceedings being commenced before—Retrospective enactment when applicable to pending proceedings—General Clauses Consolidation Act* (*I of* 1868), *s.* 6.] On the 30th January, 1894, an application was made for execution of a decree passed on the 5th of the same month, and certain property was thereafter duly attached. On the 8th February, 1894, the sale proclamation was published, and, on the 26th March, the sale was held. On the 17th April, 1894, the judgment-debtor applied to the Court under the provisions of s. 310A of the Code of Civil Procedure (which section was added to the Code by Act V of 1894, and which came into operation on the 2nd March, 1894) to have the sale set aside on payment to the auction-purchaser of 5 per cent. on the purchase-money and to the decree-holder of the amount mentioned in the sale proclamation. The auction-purchaser resisted the application on the ground that the section could not affect the sale in question:—*Held* (PETHERAM, C.J., and O'KINEALY, J., dissenting) that the section conferred a new and substantive right on the judgment-debtor, and was not merely a matter of procedure; and that, as Act V of 1894 does not clearly indicate the intention of the Legislature, that it was meant to have retrospective effect, the section had no application to

EXECUTION OF DECREE—*continued.*

(1) EFFECT OF CHANGE OF LAW PENDING EXECUTION—*continued.*

pending proceedings, and the judgment-debtor was not entitled to have the sale set aside under its provisions:—*Held, per* PETHERAM, C. J., and O'KINEALY J., that the section merely dealt with a matter of procedure and applied to the sale, which the judgment-debtor was entitled to have set aside. *Per* PETHERAM, C. J.—All that s. 310A does, so far as the decree-holder and judgment-debtor are concerned, is to extend the period during which the latter may discharge his liability by 30 days beyond the date of the sale, and is merely a modification of the way in which the successful litigant may obtain the fruits of his decree; and even if it be considered as creating a new and substantive right in the judgment-debtor, the words used by the Legislature in Act V of 1894 must be taken to have been used with the express intention that the section should have a retrospective effect in the sense that it should take effect on sales held after the Act came into operation, though the execution proceedings, of which the sale was a part, had been commenced before the Act came into operation. *Per* O'KINEALY, J.—Act XIV of 1882 is on the face of it, an Act of procedure and nothing more, and what the Legislature intended to do by Act V of 1894 was to amend the rules of that Code with regard to the sale and delivery of property, and the section, both in form and substance, is merely a rule of procedure under which no party has a vested interest. In addition, as under s. 316 of the Code, a purchaser has no vested interest in the property before the date of the certificate, he could not insist on the sale being confirmed and a certificate being given him if the amount due by the judgment-debtor be paid in before that date. *Lal Mohun Mukerjee* v. *Jogendra Chunder Roy*, I. L. R. 14 Calc. 636; *Tupsee Singh* v. *Ram Saran Koeri*, I. L. R. 15 Calc. 376; *Uzir Ali* v. *Ram Komal Shaha*, I. L. R. 15 Calc. 383; and *Debnarain Dutt* v. *Norendra Krishna*, I. L. R. 16 Calc. 257, referred to. GIRISH CHUNDRA BASU *v.* APURBA KRISHNA DASS.

[21 Calc. 940

3.—*Civil Procedure Code* (1882), *s.* 310*A*—*Civil Procedure Code Amendment Act* (*V of* 1894)—*Construction of Statute—Effect of Act creating new rights—Sale in execution of decree held after Act V of* 1894 *came into operation, the execution proceedings being commenced before—General Clauses Consolidation Act* (*I of* 1868), *s.* 6—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 174—*Civil Procedure Code* (1882), *s.* 622—*Superintendence of High Court.*] On the 8th February, 1894, a decree was obtained against *A* and others in the Small Cause Court of Calcutta, and was subsequently transferred to one *J* who was substituted in the place of the original decree-holder. On the 26th July, *J* applied in the Small Cause Court for execution of the decree, and, on the same date, the decree was transferred for execution to the District Court of Bankura. On the 3rd August, a writ of attachment issued, and, on the 5th, it was served. Sale proclamation issued on the 11th and was served on the 14th August, and, on

EXECUTION OF DECREE—*continued.*

(1) EFFECT OF CHANGE OF LAW PENDING EXECUTION—*continued.*

the 20th September, the sale took place. On the 27th September, 1894, the judgment-debtor applied, under s. 310A of the Code of Civil Procedure, which section became part of the Code, under the provisions of Act V of 1894, passed on the 2nd March, 1894, to have the sale set aside. The District Judge relying upon the case of *Girish Chundra Basu* v. *Apurba Krishna Dass*, I. L. R. 21 Calc. 940, together with the principle enunciated in the cases of *Lal Mohun Mookerjee* v. *Jogendra Chundra Roy*, I. L. R. 14 Calc. 636; and *Uzir Ali* v. *Ram Komal Shaha*, I. L. R. 15 Calc. 383, refused to set it aside, on the ground that s. 310A was not a mere matter of procedure, and Act V of 1894 had no retrospective effect, and therefore s. 310A was not applicable to proceedings in execution of a decree which had been passed before that section came into operation. In an application under s. 622 of the Civil Procedure Code to set aside this decision as wrong:—*Held*, by the Full Court, that the decision in *Lal Mohun Mookerjee* v. *Jogendra Chunder Roy*, I. L. R. 14 Calc. 636, so far as it holds that s. 174 of the Bengal Tenancy Act creates a new right in a judgment-debtor, and is therefore inapplicable to a case in which the decree was passed before that Act became law, is wrong. The cases of *Uzir Ali* v. *Ram Komal Shaha*, I L. R. 15 Calc. 383; and *Girish Chundra Basu* v. *Apurba Krishna Dass*, I. L. R. 21 Calc. 940, which are based upon the same principle, are also wrongly decided. *Quære:* Whether the decision in *Lal Mohun Mukerjee* v. *Jogendra Chunder Roy*, I. L. R. 14 Calc. 636, was correct under s. 6 of the General Clauses Act by reason of the execution proceedings having been commenced under Bengal Act VIII of 1869, an Act repealed by the Bengal Tenancy Act? That question did not arise in the present case, for though the execution proceedings were instituted under the old law, the case is unaffected by s. 6 of the General Clauses Act, as the change in the law was brought about, not by the repeal of the old Act, but by the addition to it of a new section (310A):—*Held*, therefore, that s. 310A was applicable to the proceedings in execution in the present case, and in that view the Court below was bound, upon the application of the judgment-debtor, to set aside the sale, and not having done so, it had failed to exercise jurisdiction within the meaning of s. 622 of the Code. The Court had power, therefore to interfere under that section. JOGODANUND SINGH *v.* AMBITA LAL SIRCAR.

[22 Calc. 767

4.—*Civil Procedure Code* (1882), *s.* 310A—*Civil Procedure Code Amendment Act* (*V of* 1894)—*Application of Act V of* 1894 *when proceedings in execution had commenced before its enactment—Sale in execution of decree, Application to set aside.*] A house of the judgment-debtor, having long previously been attached in execution of a decree, was brought to sale on the 9th of March, 1894, that is, shortly after the enactment of Act V of 1894. The judgment-debtor now applied under the Civil Procedure Code, s. 310A,

EXECUTION OF DECREE—*continued.*

(1) EFFECT OF CHANGE OF LAW PENDING EXECUTION—*concluded.*

that the sale be set aside:—*Held*, that the provisions of Act V of 1894, whereby the above-mentioned section was added to the Civil Procedure Code, were applicable to the case. RANGASAMI NAIDU *v.* VIRASAMI CHETTI.

[18 Mad. 477

5.—*Gujarat Talukdars Act* (*Bombay Act VI of* 1888), *s.* 31—*Sale in execution of a decree upon a mortgage before the Act—Necessity of sanction of the Governor in Council to the sale.*] Certain *talukdari* estate was mortgaged under a *sankhat* executed before the Gujarat Talukdars Act (Bombay Act VI of 1888) came into force. On the 22nd August, 1889 (*i.e.*, subsequent to the Act coming into force), a decree was passed for sale of the mortgaged property. The decree was transferred for execution to the Collector, who refused to put up the property to sale without the previous sanction of Government as required by s. 31 of the Talukdari Act:—*Held*, that s. 31 of the Act had no application to the present case. The *san*-mortgage having been executed before the Act came into force, and left with its validity untouched by cl. (1) of s. 31, the ordinary remedy of the mortgagee to bring the property to sale was not taken away by that section. The sanction of the Governor in Council was therefore not necessary to the sale in execution of the decree on the mortgage. NAGAR PRAGJI *v.* JIVABHAI BAVAJI.

[19 Bom. 80

See DOSHI FULCHAND *v.* MALEK DAJIRAJ.

[20 Bom. 565

in which the correctness of the above decision was doubted.

(2) PROCEEDINGS IN EXECUTION.

6.—*Objection to application for execution of decree by person not party to decree—Practice.*] A person, not a party to a suit, is not entitled to object to the issue of an order for execution of the decree. NATHUBHAI MULCHAND *v.* NANA BABU.

[19 Bom. 544

7.—*Civil Procedure Code* (1882), *s.* 43.] Section 43 of the Civil Procedure Code (Act XIV of 1882) is not applicable to proceedings in execution of decree. So, *held* by EDGE, C. J., and TYRRELL, KNOX, BLAIR and BURKITT, JJ. SADHO SARAN *v.* HAWAL PANDE.

[19 All. 98

(3) APPLICATION FOR EXECUTION AND POWER OF COURT.

8.—*Civil Procedure Code Amendment Act* (*VI of* 1892), *s.* 4—*Proceedings in the suit.*] Applications for execution of the decree are proceedings in the suit. SADASHIV GANPATRAO *v.* VITTHALDAS NANCHAND.

[20 Bom. 198

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*continued.*

9.—*Civil Procedure Code* (1882), *s.* 43—*Successive applications for execution in respect of different reliefs granted by the same decree.*] Section 43 of the Code of Civil Procedure is not applicable to proceedings in execution of decree. So *held* by EDGE, C. J., and TYRRELL, KNOX, BLAIR and BURKITT, JJ. Where a decree grants different reliefs, as for example, possession of land and *mesne* profits, it is competent to the decree-holder to execute such decree by means of separate and successive applications in respect of each relief. So *held* by EDGE, C. J., and TYRRELL, KNOX, BLAIR and BURKITT, JJ. *Ram Baksh Singh* v. *Madat Ali*, 7 N. W. 95; and *Radha Kishen Lall* v. *Radha Pershad Sing*, I. L. R. 18 Calc. 515, cited. SADHO SARAN *v.* HAWAL PANDE.

[19 All. 98

10.—*Application for execution dismissed for default—Power of the Court to restore such application to the file—Civil Procedure Code* (1882), *ss.* 103 *and* 647—*Civil Procedure Code Amendment Act* (*VI of* 1892), *s.* 4—*Construction of statute.*] There is nothing in the Code of Civil Procedure (XIV of 1882) as amended by Act VI of 1892, which authorizes a Court to apply to execution proceedings any of the procedure enacted in Chap. VII of the Code. Accordingly a Court cannot, under s. 103, restore to the file an application for execution which has been dismissed for default. Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings. HAJRAT AKRAMNISSA BEGAM *v.* VALIULNISSA BEGAM.

[18 Bom. 429

Where an application for execution has been dismissed for default, a fresh application can be made. HAJRAT AKRAMNISSA BEGAM *v.* VALIULNISSA BEGAM.

[18 Bom. 429

TIRTHASAMI *v.* ANNAPPAYYA.

[18 Mad. 131

11.—*Civil Procedure Code* (1882), *ss.* 98, 248 *and* 647—*Notice of execution—Dismissal of application on failure of both parties to appear on the appointed day.*] A *darkhast* for the execution of a decree can be dismissed when on its presentation a notice is issued to the judgment-debtor under s. 248 of the Civil Procedure Code (Act XIV of 1882), and neither party appears on the day on which it is made returnable. TUKARAM *v.* KHANDU.

[20 Bom. 541

12.—*Procedure applicable to execution of decrees—Appeal, Right of—Review—Civil Procedure Code, s.* 623—*Limitation.*] It is the duty of a Court to which an application to execute a decree is presented to satisfy itself, whether or no such application is barred by limitation. If the Court on such an application omits to decide the question of limitation, or decides it against the judgment-debtor, and, in his opinion, wrongly, the judgment-debtor may either appeal or can apply under s.

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*continued.*

323 of the Code of Civil Procedure for review of the Court's order, and this whether notice of the application for execution had been issued to him or not. A Court in executing a decree should look to the substance rather than to the form of applications presented to it. Where an application was made by a judgment-debtor objecting to the execution of a decree against him on the ground that it was barred by limitation, previous objections to execution having been disallowed, it was *held* that the relief prayed for being one which could only be granted by way of review the application should be treated as one for that purpose. RAMU RAI *v.* DAYAL SINGH.

[16 All. 390

13.—*Jurisdiction of the Court to which a decree is sent for execution—Code of Civil Procedure* (1882), *ss.* 223, 228 *and* 239—*Question of limitation.*] The Court to which a decree is sent for execution under s. 223 of the Civil Procedure Code has jurisdiction to decide whether or not the execution was barred by limitation. *Leake* v. *Daniel*, B. L. R. Sup. Vol. 970; 10 W. R. 10 F. B. *Nursing Doyal* v. *Hurryhur Saha*, I. L. R. 5 Calc. 897; *Jassoda Koer* v. *Land Mortgage Bank of India*, I. L. R. 8 Calc. 916; *Srihary Mundal v. Murari Chowdhry*, I. L. R. 13 Calc. 257, referred to. *Soomut Dass* v. *Bhoobun Lall*, 21 W. R. 292; *Lootfoollah* v. *Keerut Chand*, 21 W. R. 330; 13 B. L. R. A. P. 30; and *Ramu Rai* v. *Dayal Singh*, I. L. R. 16 All. 390, dissented from. CHHOTAY LALL *v.* PURAN MULL.

[23 Calc. 39

14.—*Effect as regards limitation of striking off petition for execution of decree—Second application, without express leave granted when the first was struck off—Code of Civil Procedure* (1882) *ss.* 373 *and* 647—*Civil Procedure Code Amendment Act* (*VI of* 1892), *ss.* 4 *and* 5—*Limitation.*] It is clear, both from the Code of Civil Procedure itself, and from the provisions of the Limitation Act of 1877, that a succession of applications for execution is contemplated. Section 647 of the Code of Civil Procedure cannot, on its true construction, be applied to execution of decree, and was inapplicable to petitions for execution before, and independently of, the passing of Act VI of 1892, ss. 4 and 5. A first application for execution of a decree having been, on the decree-holder's petition, struck off the list of cases pending for hearing, a second application was made within the period of limitation:—*Held*, that the first application, notwithstanding that the order striking it off had been made, was not annulled, but afforded a fresh starting point for limitation:—*Held*, also, that although the petition for execution had been withdrawn without leave to apply again having been expressly granted by the Court, the petitioner's right to renew his petition, within due time, remained. The provisions of s. 373, which could only have applied through the effect of s. 647, had not been rendered applicable thereby to petitions for execution. The judgment in *Sarju Prasad* v. *Sita Ram*, I. L. R. 10 All. 71, overruled; that in *Bunko Behary Gangopadhya* v. *Nil Madhub Chuttopadhya*, I. L. R. 18 Calc. 635, approved. THAKUR PRASAD *v.* FAKIR-ULLAH.

[17 All. 106

[L. R. 22 I. A. 44

Reversing on appeal FAKIR-ULLAH *v.* THAKUR PRASAD.

[12 All. 179

15.—*Question of jurisdiction—Court executing decree.*] It is competent to the Court charged with the execution of a decree to consider the question as to whether the Court which passed the decree had jurisdiction to pass it, unless the decree itself precludes that question. *Muhammad Sulaiman Khan* v. *Fatima*, I. L. R. 11 All. 314; and *Musa Haji Ahmed* v. *Purmanand Nursey*, I.L.R. 15 Bom. 219, referred to. IMDAD ALI *v.* JAGAN LAL.

[17 All. 478

16.—*Civil Procedure Code* (1882), *s.* 235—*Order absolute for sale, Application for—Verification of application—Limitation—Transfer of Property Act* (*IV of* 1882), *s.* 89.] An application for an order absolute for sale of mortgaged property under the provisions of s. 89 of the Transfer of Property Act, 1882, is not an application for execution of a decree, and need not therefore be in the form prescribed by s. 235 of the Code of Civil Procedure. A decree was passed in a mortgage suit on the 13th July, 1887, by consent, which directed that the amount due was to be paid in ten annual instalments during the years 1295—1304 (1888—1897) in the month of Falgoon (February) each year, and that, on default of three successive instalments, the whole amount was to become at once due and payable. The mortgagor having defaulted in payment of the instalments due in the years 1797, 1298 and 1299 (1880, 1891 and 1892), the mortgagee, on the 18th February, 1893, presented an application to the Court, under s. 89 of the Transfer of Property Act, for an order absolute for sale. That application was not verified by the mortgagee, and the mortgagor objected that, not being so verified as required by s. 235 of the Code, it could not be granted. On the 9th May, 1893, the mortgagee applied for and obtained leave to verify the application, which he did on that day. It was urged on behalf of the mortgagor that the application must be treated as made on the 9th May and therefore, not within three years of the date on which the 1297 instalment became due (7th March, 1890), and that it was therefore barred by limitation:—*Held*, that the application did not require to be in the form provided by s. 235, and consequently the non-verification did not affect it, and that it was not barred by limitation. AJUDHIA PERSHAD *v.* BALDEO SINGH.

[21 Calc. 813

17.—*Defective application for execution of decree—Civil Procedure Code* (1882), *ss.* 245 *and* 647—*Amendment of execution petition—Limita-*

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*concluded.*

tion.] One, being entitled under a decree of 1809 to a share in the income of a zemindari, obtained a decree in a suit of 1887 against certain recent purchasers of the zemindari, declaring that he had a valid charge on the estate and awarding to him, besides his costs, the amount due in respect of one year. He now applied in execution of the latter decree for payment of the amount due in respect of five years as well as his costs. An application to amend the petition for execution by inserting a reference to the former decree was made after the right of the petitioner in respect of some of the years in question had become barred by limitation. This application was refused by the Court of first instance:—*Held*, that, under the circumstances of the case, the amendment should have been allowed to be made. SATTAPPA CHETTI *v.* JOGI SOORAPPA.

[17 Mad. 67

18.—*Defect in application for execution—Step in aid of execution—Civil Procedure Code, s.* 235.] Where there has been in fact an application for execution made by the party entitled to make it, it is to be regarded as a step in aid of execution within the meaning of the Limitation Act, Art. 179, although by mistake a deceased judgment-debtor is named as the person against whom execution is sought. SAMIA PILLAI *v.* CHOCKALINGA CHETTIAR.

[17 Mad. 76

19.—*Application defective in form—Decree for performance of particular Acts—Civil Procedure Code* (1882), *ss.* 235, 260 *and* 539.] In a suit brought under s. 539 of the Code of Civil Procedure (Act XIV of 1882) a decree was passed appointing the defendants managing trustees of a Hindu temple, and laying down certain rules for their guidance in future. The plaintiffs applied for execution of the decree, and filed a *darkhast*, praying that the defendants be ordered to act as directed by the decree, and that, if they failed to do so, steps be taken according to law:—*Held*, that the *darkhast* was not in accordance with s. 235, cl. (*j*), or s. 260, of the Code, as it did not specify the mode in which the assistance of the Court was sought. KARAMCHAND GOKALDAS *v.* GHELABHAI CHAKALDAS.

[19 Bom. 34

(4) ORDERS AND DECREES OF PRIVY COUNCIL.

20.—*Application to receive and file order for purpose of execution—Erroneous order, Effect of—Civil Procedure Code, s.* 610, *Function of Court under—Receiver, Lien of, on estate—Alteration or amendment of decree.*] On receiving and filing under s. 610 of the Civil Procedure Code, an order of Her Majesty in Council made on appeal from an order or decree of the Court of original instance, the latter Court performs a function which is purely ministerial. *Pitts* v. *La Fontaine*, L. R. 6 App. Cas. 482, referred to. The effect of the order, however erroneous, on the suit itself cannot be discussed on an application of this

EXECUTION OF DECREE—*continued.*

(4) ORDERS AND DECREES OF PRIVY COUNCIL—*concluded.*

nature. A receiver, however, who is divested by such order, has a lien on the estate for his claims and allowances. *Bertrand* v. *Davies*, 31 Beav. 429; *Fraser* v. *Burgess*, 13 Moo. P. C. 314; and *Batten* v. *Wedgewood Coal & Iron Co.*, L. R. 28 Ch. D. 317, followed. *Semble*—The proper course for the party aggrieved by the order is to apply to Her Majesty in Council to make the necessary alteration or modification in such order. PREMLALL MULLICK *v.* SUMBHOONATH ROY.

[22 Calc. 960

21.—*Decree of Privy Council for costs—Rate of exchange—Civil Procedure Code* (1882), *s.* 610—*Meaning of "for the time being."*] Under s. 610 of the Code of Civil Procedure, the amount payable must be calculated at the rate of exchange for the time being fixed by the Secretary of State for India in Council, and the words for "the time being" have reference only to the time at which the order of the Privy Council was passed, and not to the time at which execution was taken out. *Param Sukh* v. *Ram Dayal*, I. L. R. 8 All. 650, dissented from. Where interest on costs is not allowed in the order of Her Majesty in Council, such interest cannot be given by any Court in this country. *Forester* v. *The Secretary of State for India*, I. L. R. 3 Calc. 161; L. R. 4 I. A. 137, referred to. DAKHINA MOHAN ROY CHOWDHRY *v.* SARODA MOHAN ROY CHOWDHRY.

[23 Calc. 357

(5) DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.

22.—*Appeal against part of decree—Decree affirmed in appeal—Period from which limitation runs after an appeal.*] In a suit for the value of goods and for damages, the Court allowed the claim with respect only to a portion of the plaintiffs' claim, and rejected the rest. The plaintiffs appealed against the latter part of the decree. The decree was confirmed in appeal. The plaintiffs applied for execution of the decree after the expiration of three years from the date of the original decree, but within three years from the date of the appellate decree. The lower Court rejected the application as time-barred, being of opinion that the original decree still existed, there having been no appeal against that part of the decree which allowed the claim:—*Held*, discharging the order of rejection, that when the Appellate Court confirms the decree of the Court below, the latter becomes incorporated in the decree of the Appellate Court, which is thenceforth the only decree to be executed. SAKHALCHAND RIKHAWDAS *v.* VELCHAND GUJAR.

[18 Bom. 203

SHIVLAL KALIDAS *v.* JUMAKLAL NATHIJI DESAI.

[18 Bom. 542

HARKANT SEN *v.* BIRAJ MOHAN ROY.

[23 Calc. 876

EXECUTION OF DECREE—*continued.*

(5) DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*continued.*

23.—*Execution of decree for rent and cancelment of lease—Decree of Appellate Court—Computation of time for payment from "date of decree" under Chota Nagpore Landlord and Tenant Act (Bengal Act I of* 1879), *s.* 88.] A decree under s. 88 of the Chota Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879), provided that on failure of the defendant (tenant) to pay the amount due under the decree within fifteen days, his lease should be cancelled. An appeal preferred against the decree was dismissed, and the defendant paid the decretal amount within fifteen days of the date of the appellate decree. Some time after, the decree-holder applied for execution of the decree and cancelment of the lease. The application was rejected by the Court below:—*Held*, that in a case where the decree of the original Court was not executed pending the appeal to the higher Court, the words "date of the decree" in the latter part of s. 88 of Act I of 1879 ought to be read as the date of the *final* decree; that the decree of the Appellate Court was the final decree and the only decree capable of execution; and the payment of the decretal amount having been made within fifteen days of that decree, the application for execution was rightly dissallowed. *Noor Ali Chowdhuri* v. *Koni Meah*, I. L. R. 13 Calc. 13; *Daulat* v. *Bhukandas Manekchand*, I. L. R. 11 Bom. 172; *Rupchand* v. *Shams-ul-Jehan*, I. L. R. 11 All. 346, followed NAM NARAIN SINGH *v.* LALA ROGHUNATH SAHAI.

[22 Calc. 467

24.—*Confirmation by High Court of decree of lower Court—Former dismissal of application for execution of original decree—Effect of an application for execution of appellate decree—Res judicata—Limitation.*] Where the High Court confirms, on appeal, the decree of a subordinate Court, such confirmation has the same effect as an order of reversal would have had, in so far as it leaves the decree of the High Court as the only decree which exists for the purpose of execution, and the decree of the lower Court becomes incorporated with it. On 23rd July, 1888, plaintiff obtained a decree for the redemption of certain lands, on payment within three months of the amount due to the mortgagee, which was to be ascertained in execution proceedings. Against this decree the defendant appealed to the High Court. Pending the appeal, the plaintiff presented a *darkhast* for execution on the 4th October, 1888. This *darkhast* was dismissed, as the plaintiff failed to produce a copy of the mortgage-bond within the time allowed by the Court. The three months allowed by the decree for payment expired on the 23rd October, 1888. On 11th February, 1890, the High Court confirmed the decree, and, on 11th April, 1890, plaintiff presented a fresh *darkhast* for execution. Both the lower Courts dismissed this *darkhast* on the ground that the dismissal of the first *darkhast* operated as *res judicata*:—*Held*, that the plaintiff was entitled to execute the decree, and that his second *darkhast* was not barred either by limitation or on the principle of *res judicata*. NANCHAND *v.* VITHU.

[19 Bom. 258

EXECUTION OF DECREE—*continued.*

(5) DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*concluded.*

(6) NOTICE OF EXECUTION.

25.—*Civil Procedure Code* (1882), *s.* 248—*Effect of omission to give notice of execution—Auction-purchaser.*] Where in execution of a decree, for the execution of which a notice to the judgment-debtor was necessary under s. 248 of the Civil Procedure Code, certain moveable property was attached and sold without any such notice having been given:—*Held*, that the proceedings in execution were void and of no effect, and it made no difference that the auction-purchaser was a third party and not the decree-holder. *Imamunnissa Bibi* v. *Liakat Husain*, I. L. R. 3 All. 424, followed; *Ramessuri Dassee* v. *Doorgadass Chatterjee*, I. L. R. 6 Calc. 103, referred to. SAHDEO PANDEY *v.* GHASIRAM GYAWAL.

[21 Calc. 19

(7) TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

26.—*Order transferring decree for execution—Code of Civil Procedure* (1882), *ss.* 224 *and* 226—*Whether an order forwarding a decree by a District Judge to a subordinate Judge for execution requires his signature.*] An order forwarding a decree for execution to a subordinate Court by the Court of the District Judge, where the decree has been transmitted under s. 226 of the Code of Civil Procedure, need not be signed by the District Judge himself. If the order is issued under his authority, the absence of his signature does not vitiate the proceeding. JOGENDRA CHANDRA GHOSE *v.* MAHESH CHANDRA DUTTA.

[23 Calc. 480

27.—*Property outside jurisdiction of Court—Mortgage decree—Civil Procedure Code* (1882), *ss.* 19 *and* 223.] A Court that has jurisdiction to pass a decree for the sale of property comprised in a mortgage has also power to carry out its decree by selling the property even though a portion of the property be situate outside the local limits of its jurisdiction. *Gopi Mohan Roy* v. *Doybaki Nundun Sen*, I. L. R. 13 Calc. 13, followed; *Prem Chand Dey* v. *Mokhoda Dabi*, I. L. R. 17 Calc. 699, distinguished. TINCOURI DEBYA *v.* SHIB CHANDRA PAL CHOWDHURY.

[21 Calc. 639

JAGERNATH SAHAI *v.* DIP RANI KOER.

[22 Calc. 871

28.—*Civil Procedure Code* (1882), *ss.* 25 *and* 223—*Madras Civil Courts Act* (*Madras Act III of* 1873), *s.* 12—*Jurisdiction of Munsif—Execution of decree of superior Court.*] As in suits so in execution proceedings the competent *forum* is ordinarily that indicated by s. 12 of the Civil Courts Act, but in the five cases mentioned in s.

EXECUTION OF DECREE—*continued.*

(7) TRANSFER OF DECREE FOR EXECUTION, &c.—*continued.*

223 of the Civil Procedure Code special reasons exist for departing from that rule and creating a special or extraordinary jurisdiction, the object whereof is to secure to judgment-creditors in certain cases a special facility or convenience. The condition as to the jurisdiction of the Subordinate Court to which a suit can be transferred under s. 25 of the Code of Civil Procedure is not laid down in s. 223 of the Code, which relates to transfers of applications for execution of decrees, and was omitted therefrom for the special reasons mentioned therein. *Narasayya* v. *Venkatakrishnayya*, I. L. R. 7 Mad. 397, followed. *Gokul Kristo Chunder* v. *Aukhil Chunder Chatterjee*, I. L. R. 16 Calc. 457; and *Durga Charan Mojumdar* v. *Umatara Gupta* I. L. R. 16 Calc. 465, dissented from. SHANMUGA PILLAI *v.* RAMANATHAN CHETTI.

[17 Mad. 309

29.—*Transfer of execution proceedings by District Judge from one Small Cause Court to subordinate Court—Civil Procedure Code Amendment Act (VI of 1892), s. 4—Rateable distribution—Civil Procedure Code* (1882), *ss.* 25, 223 (*d*), 295 *and* 647 *—District Judge, Power of—Subordinate Judge, Power of.*] A District Judge has power, under s. 25 of the Civil Procedure Code (XIV of 1882), or under that section read with s. 647, to transfer execution proceedings in a Small Cause Court to the Court of a Subordinate Judge. The ruling in the case of *Balaji Ranchoddas*, I. L. R. 5 Bom. 680, that these sections apply to execution proceedings in Small Cause Courts, is not affected by the explanation to s. 4 of Act VI of 1892. Execution proceedings under a decree against *A* in a Small Cause Court were transferred by a District Judge to a Subordinate Judge's Court where execution was proceeding against *A* under another decree, and it was objected that, as by the concluding paragraph of s. 25 of the Civil Procedure Code, the attachments under the two decrees would be in different Courts, s. 295 of the Code would not apply, and rateable distribution could not be granted:—*Held*, that the last paragraph of s. 25 did not convert the Subordinate Judge's Court into a Small Cause Court, but only provided for the trial of the suit, which had been transferred, being conducted by the Subordinate Judge's Court as a Small Cause suit. *Quære:* Whether a Subordinate Judge, under cl. (*d*) of s. 223 of the Civil Procedure Code (XVI of 1882), can transfer a decree for execution to a Court of Small Causes when the property attached is situate within the local jurisdiction of the Subordinate Judge. KRISHNA VELJI MARWADI *v.* BHAU MANSARAM.

[18 Bom. 61

30.—*Civil Procedure Code* (1882), *ss.* 223 *and* 226 *—Execution of decree passed in another district—Jurisdiction of Munsif.*] On the application of the decree-holder, a decree for money passed by a Munsif in one district was sent for execution to the Court of a Munsif in another district, and not to the District Court, as provided for in s. 223 of the Civil Procedure Code:—*Held*, that the Munsif's Court, to which the decree was sent for execution, had no jurisdiction to execute it without an express order of the District Judge under s. 226. DEBI DIAL SAHU *v.* MOHARAJ SINGH.

[22 Calc. 764

31.—*Civil Procedure Code* (1882), *ss.* 223 *and* 239 *—Power of Court executing a decree sent for execution to question propriety of order transferring it.*] Where a decree is passed by one Court and sent to another Court for execution, the Court executing the decree cannot question the propriety of the order transferring the decree to such Court for execution. MULLA ABDUL HUSSEIN *v.* SAKHINABOO.

[21 Bom. 456

(8) EXECUTION BY COLLECTOR.

32.—*Civil Procedure Code* (1882), *ss.* 322, 322 *A*, 322 *B*, 325 *and* 326—*Civil Procedure Code* (1877), *s.* 326—*Right of creditor under a simple money decree obtained after property has been taken over by the Collector to be entered in list of creditors prepared under s.* 322 *B.*] *Held*, that the assignees of a decree for money obtained against a person whose property had been taken over by the Collector under s 326 of Act X of 1877, whilst such property was under the management of the Collector, were not entitled to be placed on the list of creditors prepared by the Collector under s. 322 of Act XIV of 1882; and that, in any case, application to be placed on the said list of creditors should have been made to the Collector and not to the District Judge. MURARI DAS *v.* COLLECTOR OF GHAZIPUR.

[18 All. 313

(9) MODE OF EXECUTION.

(*a*) DECLARATORY DECREES.

33.—*Decree under s.* 260, *Civil Procedure Code* (1882)—*Decree directing performance of specific acts.*] *Held*, that a decree under s. 260 of the Civil Procedure Code which directed the judgment-debtor to perform certain specific acts, and which also declared rights on the part of the decree-holders against him was not incapable of being executed under s. 260, on the objection that it was only declaratory. KISHORE BUN MOHUNT *v.* DWARKANATH ADHIKARI; KISHORE BUN MOHUNT *v.* PROSONNO COOMAR ADHIKARI.

[21 Calc. 784
[L. R. 21 I. A. 89

(*b*) JOINT PROPERTY.

34.—*Joint Hindu family—Simple money-decree against father alone sought to be executed after his death against joint family property in the hands of the son—Civil Procedure Code, ss.* 234 *and* 244.] A creditor of a father in a joint Hindu family governed by the law of the Mitakshara, who has obtained a simple decree for money in

EXECUTION OF DECREE—*continued.*

(9) MODE OF EXECUTION—*continued.*

(*b*) JOINT PROPERTY—*concluded.*

a suit against the father alone, cannot obtain execution of that decree against the joint family property or any part of it in the hands of the son in a proceeding against the son in execution of that decree instituted after the death of the father, and not being a proceeding in continuation of an attachment of the property effected during the lifetime of the father: the proceeding in execution not being barred by the law of limitation, and the son not being precluded by any estoppel from proving that the property was joint family property at the time of his father's death, and is in his hands ancestral property, and not assets representing what was at the time of his father's death separate property of his father. But, in such a case, if the creditor desires to obtain a remedy against the ancestral property, or any part of it, in the hands of the son, he must seek that remedy in a suit against the son, in answer to which suit, when brought, the son will be entitled to prove that the suit is barred by limitation, that the debt was tainted by immorality, or any other matter that would be a defence against the son. *Suraj Bunsi Koer* v. *Sheo Proshad Singh*, I. L. R. 5 Calc. 148; L. R. 6 I. A. 88; *Nanomi Babuasin* v. *Modhun Mohun*, I. L. R. 13 Calc. 21; L. R. 13 I. A. 1; *Badri Prasad* v. *Madan Lal*, I. L. R. 15 All. 751; *Seth Chand Mal* v. *Durga Dei*, I. L. R. 12 All. 313; *Clegg* v. *Rowlands*, L. R. 3 Eq. 373; *Payne* v. *Parker*, L. R. 1 Ch. App. 327; *Chowdry Wahid Ali* v. *Jumaee*, 11 B. L. R. 149; 18 W. R. 185; *Raghubar Dyal* v. *Hamid Jan*, I. L. R. 12 All. 73; *Sangili Virapandia Chinnathambiar* v. *Alwar Ayyangar*, I. L. R. 3 Mad. 42; *Karnataka Hanumantha* v. *Andukuri Hanumayya*, I. L. R. 5 Mad. 232; *Muthia* v. *Virammal*, I. L. R. 10 Mad. 283; *Ariabudra* v. *Dorasami*, I. L. R. 11 Mad. 413; *Venkatarama* v. *Senthivelu*, I. L. R. 13 Mad. 265; *Balbir Singh* v. *Ajudia Prasad*, I. L. R. 9 All. 142; *Jagannath Prasad* v. *Sita Ram*, I. L. R. 11 All. 302; and *Beni Pershad* v. *Parbati Koer*, I. L. R. 20 Calc. 895, referred to. LACHMI NARAIN *v.* KUNJI LAL; LACHMI NARAIN *v.* CHOTE LAL.

[16 All. 449

35.—*Money decree against father—Execution against son after the death of the father—Ancestral property in the hands of the son—Civil Procedure Code* (1882), *s.* 234.] A money decree obtained against the father of an undivided Hindu family can be executed after his death against his sons to the extent of the ancestral property that has come into their hands even if the debt has been incurred for the sole purposes of the father, provided that it is not tainted with immorality or illegality. If the son against whom the decree is sought to be executed as representative of his father takes the objection that the debts are tainted with immorality, he can do so under s 244 of the Civil Procedure Code (Act XIV of 1882). *Ariabudra* v. *Dorasami*, I. L. R. 11 Mad. 413; and *Lachmi Narayan* v. *Kunjilal*, I. L. R. 16 All. 449, not followed. UMED HATHISING *v.* GOMAN BHAIJI.

[20 Bom. 385

EXECUTION OF DECREE—*continued.*

(9) MODE OF EXECUTION—*continued.*

(*c*) MAINTENANCE.

36.—*Enforcement of decree for maintenance—Right of suit.*] Where a decree in a suit for maintenance gave the plaintiffs a right to recover maintenance for the year previous to the suit, and also declared their right to maintenance in future, but omitted to specify any precise date on which such maintenance should become payable:—*Held*, that such decree was one which could be enforced from time to time by suit. *Vishnu Shambhog* v. *Manjamma*, I. L. R. 9 Bom. 108, approved; *Ashutosh Bannerjee* v. *Lukhimoni Debya*, I. L. R. 19 Calc. 139, distinguished. RAM DIAL *v.* INDAR KUAR.

[16 All. 179

(*d*) MORTGAGE.

37.—*Transfer of Property Act* (*IV of* 1882), *ss.* 88 *and* 90—*Decree not satisfied after sale of mortgaged property—Procedure necessary to obtain balance of decree.*] Where a decree-holder has obtained a decree under s. 88 of the Transfer of Property Act, and on sale of the mortgaged property the proceeds of sale are insufficient to satisfy the decree, he must, unless the decree gives him the right to proceed against other property or against the person of his judgment-debtor, apply under s. 90 of the Act for a decree for the balance remaining unsatisfied. LALLA TIRHINI SAHAI *v.* LALLA HURRUK NARAIN.

[21 Calc. 26

38.—*Land Acquisition Act* (*X of* 1870), *s.* 9—*Acquisition by Government of land subject to a mortgage—Neglect of mortgagees to claim compensation—Assessment of compensation in favour of mortgagor—Subsequent remedy of mortgagee—Transfer of Property Act* (*IV of* 1882), *ss.* 88 *and* 90.] *B M* and others, mortgagees, obtained a decree under s. 88 of the Transfer of Property Act, 1882, for the sale of the mortgaged property. Before execution of that decree, some of the mortgaged property was taken up by Government under the provisions of the Land Acquisition Act, 1870. The mortgagees never put in any claim with regard to the mortgaged property in response to the notification made under s. 9 of the last-mentioned Act, but subsequently sought to attach in the hands of the Collector the compensation money about to be paid to the mortgagor. On these facts, it was *held* that the mortgagees were not entitled to attach such money in execution of their decree under the Transfer of Property Act, 1882. Their remedy was to proceed against the mortgaged property not taken up, and, if the proceeds of sale of that were insufficient, then to apply to the Court under s. 90 of the Transfer of Property Act for a decree for the balance. BASA MAL *v.* TAJAMMAL HUSAIN.

[16 All. 78

39.—*Transfer of Property Act* (*IV of* 1882), *ss.* 88 *and* 89—*Suit for sale on a mortgage—Future interest.*] A decree for sale under s. 88 of the Transfer of Property Act, 1882, in a suit for sale on a mortgage declared a certain sum, including principal and interest up to date of decree, to be payable to the plaintiff within a stated time, and also pro-

EXECUTION OF DECREE—*continued.*

(9) MODE OF EXECUTION—*continued.*

(*d*) MORTGAGE—*continued.*

vided that the decree should carry future interest. The judgement-debtor did not pay within the specified time, and subsequently the decree-holder applied for an order absolute for sale under s. 89 of the above-mentioned Act:—*Held*, that the amount which could be realized by the decree-holder by sale of the mortgaged property would include future interest from the date of the decree under s. 88 to the date of sale, and that it was not necessary that specific mention of future interest should be contained in the order under s. 89 of the Act. RAJ KUMAR *v.* BISHESHAR NATH.

[16 All. 270

See also BHAWANI PRASAD *v.* BRIJ LAL.

[16 All. 269

40.—*Decree directing sale of mortagaged property—Transfer of Property Act (IV of 1882), ss. 88 and 89.*] A decree on a simple mortgage directing the sale of the mortgaged property on default of payment within a fixed period is substantially a decree *nisi* or conditional decree under s. 88 of the Transfer of Property Act, and cannot be executed unless it is made absolute by an order under s. 89 of that Act. *Ram Lal* v. *Narain*, I. L. R. 12 All. 539, followed; *Siva Pershad Maity* v *Nundo Lal Kar Mahapatra*, I. L. R. 18 Calc. 139, distinguished. *Poresh Nath Mojumdar* v. *Ram Jodu Mojumdar*, I. L. R. 16 Calc. 246, referred to. TARA PROSAD ROY *v.* BHOBODEB ROY.

[22 Calc. 931

41.—*Mortgage by owner of undivided share of estate—Rights of mortgagee on partition where share is allotted to a sharer other than the mortgagor.*] Land having been granted to several persons jointly, disputes arose among them with reference to its allotment. The disputes having been settled by arbitration, one of the grantees sold his share to the plaintiff. Before the arbitration, another of the grantees mortgaged seven acres of the land to *A*, who did not become a party to the arbitration. *A* subsequently obtained a decree on his mortgage and proceeded to execute it by attachment. The plaintiff intervened in execution, but, in 1884, the Court passed an order stating that the plaintiff's land was not attached, and in fact his possession then remained undisturbed. *A* subsequently executed his decree and purchased the land brought to sale by the Court. The plaintiff's possession was disturbed under colour of his purchase, and he now sued in 1889 to recover the land sold to him:—*Held*, that *A* could not execute his decree against the share sold to the plaintiff, but was limited in execution to the share allotted to his mortgagor: the plaintiff's vendor had, therefore, after the arbitration, a good title against both *A* and his mortgagor, and the plaintiff was entitled to recover. *Hem Chunder Ghose* v. *Thako Moni Debi*, I. L. R. 20 Calc. 533; and *Bijnath Lall* v. *Ramoodeen Chowdry*, L. R. 1 I. A. 105; 21 W. R. 233, referred to. PULLAMMA *v.* PRADOSHAM.

[18 Mad. 316

EXECUTION OF DECREE—*continued.*

(9) MODE OF EXECUTION—*continued.*

(*d*) MORTGAGE—*concluded.*

42.—*Transfer of Property Act (IV of 1882), s. 43—Right to execute decree against subsequently acquired interest of mortgagor—Decree against mortgagor's unascertained share—Subsequent inheritance by the mortgagors of the share of a co-owner.*] A Mahomedan woman, together with her eldest son, executed a mortgage comprising the whole of an estate in which her younger children were also entitled to certain shares. The mortgagee brought his suit on the mortgage, joining as defendants the younger children as well as the mortgagors, and obtained a decree, whereby the mortgage amount was made payable "on the responsibility of the shares" of the co-mortgagors; the suit was otherwise dismissed, and no personal decree was passed. Subsequently the shares of the co-mortgagors were increased by inheritance from one of the other defendants who died before the decree was executed:—*Held*, that the increased shares of the mortgagors were liable to be sold in execution of the decree. AJIJUDDIN SAHIB *v.* BUDAN SAHIB.

[18 Mad. 492

43.—*Puisne mortgagee—Execution against properties outside the local jurisdiction of the High Court—Leave to sue—Letters Patent, High Court, 1865, cl. 12—Application of restrictive words of that clause.*] Properties within Calcutta were mortgaged to the plaintiff, and these properties, together with other properties out of Calcutta, were mortgaged to a second mortgagee. In a suit against the mortgagor and the second mortgagee it was *held* that after the usual mortgage decree was made, the second mortgagee had the right to proceed against the properties out of Calcutta for the realization of any balance of the mortgage money that might remain due to him. The restrictive words of cl. 12 of the Letters Patent, 1865, apply to the case of a plaintiff; but there is no similar restraining provision applicable to a case where the person seeking the exercise of the Court's jurisdiction is the defendant. KISSORY MOHUN ROY *v.* KALI CHURN GHOSE.

[24 Calc. 190

(*e*) PARTITION.

44.—*Civil Procedure Code (1882), s. 396—Powers of Court executing a decree for partition—Party wall.*] *Held* that a Court has no power under s. 396 of the Code of Civil Procedure to order its Amin to cause a wall to be built separating portions of property of which partition has been decreed. SOHAN LAL *v.* HARDEO SAHAI.

[19 All. 194

(*f*) POSSESSION.

45.—*Civil Procedure Code* (1882), *s.* 263—*Delivery of possession to decree-holder in execution—Dispossession of third party—Partition, Suit for.*] The delivery of possession under s. 263 of the Civil Procedure Code contemplates the

EXECUTION OF DECREE—*continued.*

(9) MODE OF EXECUTION—*concluded.*

(*f*) POSSESSION—*concluded.*

decree-holder being placed in actual possession by possibly dispossessing, in the eye of law, a third person who is not affected by the decree. The mere formal delivery of possession cannot of itself effect such dispossession unless the deprivation of possession be complete as a fact, a conclusion which the Court has to form on the whole of the evidence. It does not make any difference if such a decree is in a partition suit. RAMCHANDRA SUBRAO *v.* RAVJI.

[20 Bom. 351

(*g*) PRINCIPAL AND SURETY.

46.—*Stay of execution on giving security—Default of judgment-debtor—Liability of surety in execution—Decree how to be satisfied when property brought into Court by judgment-debtor and payment made by surety.*] The execution of a decree for partition was stayed pending appeal on the defendant giving security that he would satisfy such decree as might ultimately be passed against him by the Appellate Court. That Court confirmed the decree of the lower Court. In obedience to the decree the judgment-debtor deposited in Court certain property in his possession consisting of bonds, decrees, and other articles. But as he did not produce the whole of the property as ordered by the decree, the Court directed execution to proceed against his surety. The surety paid into Court the full sum stipulated in the surety bond. Thereupon the judgment-debtor applied that the property deposited by him in Court should be valued and made over to the decree-holder in part satisfaction of the decree *pro tanto*, and that only the balance then remaining due should be paid out of the money paid in by the surety. The Court refused, holding that the decree-holder was entitled to be paid over the whole sum paid in by the surety. On appeal, *held* (reversing the order of the lower Court) that the property already produced in Court by the judgment-debtor should be first applied towards the satisfaction of the partition decree, and if the decree-holder did not obtain complete satisfaction in this way, the money paid in by the surety should then be made available. GOPAL NANA SHET *v.* JOHARMAL.

[19 Bom. 578

(10) EXECUTION BY, AND AGAINST, REPRESENTATIVES.

47.—*Judgment-creditor who has attached a decree—Right to execute decree—Civil Procedure Code* (1882), *s.* 244.] A judgment-creditor who attaches a decree, is, as being a representative of the judgment-debtor within the meaning of s. 244, cl. (*c*) of the Civil Procedure Code, competent to execute it. *Peari Mohun Chowdhry* v. *Romesh Chunder Nundy*, I. L. R. 15 Calc. 371, followed. RANGASAMI CHETTI *v.* PERIASAMI MUDALI.

[17 Mad. 58

EXECUTION OF DECREE—*continued.*

(10) EXECUTION BY, AND AGAINST, REPRESENTATIVES—*continued.*

48.—*Death of judgment-debtor after appellate decree—Representatives of judgment-debtor—Civil Procedure Code* (1882), *ss.* 234, 248, 361 *to* 372 *and* 583—*Parties, Substitution of—Subordinate Judge, Jurisdiction of.*] The Civil Procedure Code (Act XIV of 1882) does not contemplate the representatives of the judgment-debtor being placed on the record after the appellate decree has been passed. There is no express provision for it in the sections relating to execution. Sections 361 to 372 relate to changes during suit, and speak only of plaintiffs and defendants—terms which seem to show that they were only intended to apply to proceedings up to final determination by the appellate decree and not to proceedings in execution between the judgment-creditor and judgment-debtor. A Court of appeal having confirmed the decree of a Second Class Subordinate Judge, the decree was transferred for execution to the First Class Subordinate Judge. After the transfer the judgment-debtor died. The judgment-creditor then applied to the First Class Subordinate Judge to substitute on the record the name of the representative of the deceased. The First Class Subordinate Judge rejected the application and referred the judgment-creditor to the Second Class Subordinate Judge, who also rejected the application on the ground that the decree which was being executed was the appellate decree in which his decree was merged, and, therefore, he had no jurisdiction to entertain the application:—*Held*, that the course open to the judgment-creditor was by way of application to execute the decree against the legal representative of the deceased as provided by s. 234 of the Civil Procedure Code (Act XIV of 1882), in which case the application to execute the decree, having regard to s. 583, would be to the Second Class Subordinate Judge, although by s. 248 the notice to the party against whom execution was applied for, would be issued by the First Class Subordinate Judge to whom the decree was transferred for execution. HIRACHAND HARJIVANDAS *v.* KASTURCHAND KASIDAS.

[18 Bom. 224

49.—*Execution against representative of debtor—Civil Procedure Code* (1882), *ss.* 234, 248, 249 *and* 578—*Application by decree-holder for execution of decree by substitution on death of the judgment-debtor to the Court where the decree has been transferred.*] A decree was transferred to another Court for execution. Pending the proceedings, one of the judgment-debtors died. On an application to that Court by the judgment-creditor to execute the decree against the legal representative of the deceased judgment-debtor, a notice was issued under s. 248 of the Code of Civil Procedure. The legal representative objected that the Court had no jurisdiction to entertain the application, and that the application should have been made under s. 234 of the Code to the Court that passed the decree:—*Held*, that the power of the Court executing a decree to order execution under s. 249 against the legal

EXECUTION OF DECREE—*continued.*

(10) EXECUTION BY, AND AGAINST, REPRESENTATIVES—*continued.*

representative of a deceased judgment-debtor, after the issue of notice under s. 248, is not cut down by the provisions of s. 234, which simply empowers the decree-holder to apply to the Court which passed the decree to execute it against the legal representative of a judgment-debtor who is dead, and that the Court to which the decree has been transferred has full jurisdiction to allow execution to proceed against the legal representative:—*Held*, also, that even assuming that an application under s. 234 to the Court which passed the decree was a necessary preliminary to proceedings under s. 248 by the Court executing the decree, the omission to make it was only an irregularity which did not affect the merits of the case, and, under s. 578, the order of the Court of first instance should not have been reversed on account of such irregularity. SHAM LAL PAL *v.* MODHU SUDAN SIRCAR.

[22 Calc. 558

50.—*Civil Procedure Code* (1882), *s.* 234—*Attachment during lifetime of judgment-debtor—Application after death of judgment-debtor to bring his representatives on the record of the execution proceedings—Procedure.*] In execution proceedings, if the decree-holder desires to proceed after the death of the judgment-debtor against property which has not been attached during the lifetime of the judgment-debtor, his proper course is that marked out by s. 234 of Act XIV of 1882: but if the property has been attached during the lifetime of the judgment-debtor, it then comes into the hands of the law, and attachment does not abate on the death of the judgment-debtor, and for the purpose of proceeding against, and if necessary selling, that property it is not necessary to implead any one as a legal representative. ABDUR RAHMAN *v.* SHANKAR DAT DUBE.

[17 All. 162

51.—*Civil Procedure Code* (1882), *s.* 234—*Application to execute decree against alleged representative of deceased judgment-debtor.*] In the case of an application under s. 234 of the Code of Civil Procedure to execute a decree against a person alleged to be the representative of a deceased judgment-debtor, it is for the Court which passed the decree to decide whether the person against whom execution is sought is or is not such representative, but it is for the Court executing the decree to decide to what extent such person is liable as such representative. *Srihary Mundul* v. *Murari Chowdhry*, I. L. R. 13 Calc. 257, referred to. SETH SHAPURJI NANA BHAI *v.* SHANKAR DAT DUBE.

[17 All. 431

52.—*Civil Procedure Code* (1882), *s.* 234—*Execution against representatives of deceased person—Hindu widow, Relinquishment by—Deed of release. Condition in, to pay the widow's debt—Reversioners. Money decree against widow enforced against.*] Under the terms of a deed of release executed by a Hindu widow relinquishing the estate inherited by her from her husband in favour of reversioners, the latter bound themselves to pay off a judgment-debt due from the widow to a third party. On

EXECUTION OF DECREE—*continued.*

(10) EXECUTION BY, AND AGAINST, REPRESENTATIVES—*concluded.*

the death of the widow, the reversioners were brought upon the record as heirs of the widow, and the judgment-creditors applied to execute their decree against the reversioners by attaching the surplus proceeds of sale of one of the properties relinquished by the widow:—*Held*, that the widow might have sued the reversioners for recovery of the money that they had undertaken to pay for her, and that being so, there was clearly a debt due from them to the widow, the extent of which was precisely that of the judgment-debt now sought to be recovered. The reversioners being on the record as representatives of the widow, and they not having shown that they applied this portion of the assets of the widow which was in their hands, they were, under s. 234 of the Code of Civil Procedure, liable to have execution taken out against them to the extent of those assets. *Davenport* v. *Bishopp*, 2 Y. & C. 460, referred to; *Kameshwar Persad* v. *Ram Bahadur Singh*, I. L. R. 12 Calc. 458, distinguished. CHINTAMONY DUTT *v.* MOHESH CHUNDRA BANERJEE.

[23 Calc. 454

53.—*Death of a party to a suit after argument and before delivery of judgment—Execution against the heirs of deceased judgment-debtor—Civil Procedure Code* (1882), *ss.* 234 *and* 248—250.] On the 30th November, 1892, an appeal in the High Court was argued, and the case adjourned for judgment. On the 12th June, 1893, one of the defendant-respondents died. On the 6th July, 1893, the High Court pronounced its judgment, and a decree was drawn up as if the deceased respondent was still living. On the 15th December, 1893, the decree-holder applied for execution of the decree, but the application was rejected by the Court of first instance on the ground that, as the heirs of the deceased defendant had not been placed on the record before the judgment of the High Court was delivered, the decree was incapable of execution:—*Held*, reversing the lower Court's decision, that the decree was on its face a good decree, and it could be executed against the heirs of the deceased defendant under ss. 234 and 248—250 of the Civil Procedure Code (Act XIV of 1882) without placing them on the record of the suit. RAMACHARYA *v.* ANANTACHARYA.

[21 Bom. 314

(11) JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER.

54.—*Civil Procedure Code* (1882), *s.* 231—*Application for partial execution of joint decree.*] A decree provided that the plaintiff should pay Rs. 304 for the costs of thirteen out of eighteen defendants. Two of the defendants now sought to execute the decree in respect of their proportionate share of the sum so awarded. Besides the plaintiff, two only of the other defendants were joined as parties to these proceedings:—*Held*, that the application was not maintainable and should be dismissed. MUTHUSAMI AYYAR *v.* NATESA AYYAR.

[18 Mad. 464

EXECUTION OF DECREE—*concluded.*

(12) STRIKING OFF EXECUTION PROCEEDINGS.

55.—*Order striking off execution proceedings and maintaining attachment.*] An order on an application for execution striking off the application, but maintaining attachment effected in pursuance thereof, is an order not warranted by law. RAM NEWAZ *v.* RAM CHARAN.

[18 All. 49

EXECUTION CREDITOR.

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

[18 Mad. 13

EXECUTOR.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[23 Calc. 446

See PARTIES—PARTIES TO SUITS—EXECUTORS.

[19 Bom. 83

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[20 Mad. 51

See PROBATE—TO WHOM GRANTED.

[21 Calc. 195
[18 Bom. 237

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT.

[23 Calc. 446

——, **Acceptance or renunciation by.**

See LETTERS OF ADMINISTRATION.

[19 Bom. 123

—— **by implication.**

See WILL—CONSTRUCTION.

[20 Mad. 467

——, **Commission to.**

See MAHOMEDAN LAW—WILL.

[25 Calc. 9
[L. R. 24 I. A. 196

——, **Death of.**

See HINDU LAW—ADOPTION — REQUISITES OF ADOPTION—AUTHORITY.

[24 Calc. 589

——, **Power of**

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[20 Bom. 238
[21 Bom. 335

——, **de son tort.**

See RIGHT OF SUIT—INTESTACY.

[18 Bom. 337

EXECUTOR—*continued.*

——, **Discretion of.**

See WILL—CONSTRUCTION.

[19 Bom. 221, 770

—— **of will of Mahomedan.**

See RECEIVER.

[19 Bom. 83

——, **Mismanagement by.**

See PROBATE—OPPOSITION TO, AND REVOCATION OF, PROBATE.

[24 Calc. 95

——, **Rights of.**

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

[22 Calc. 1011
[L. R. 22 I. A. 208

——, **Transfer by, to Administrator-General.**

See ADMINISTRATOR-GENERAL'S ACT, S. 31.

[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

1.—*Power of executor—Power to sell property—Probate and Administration Act (V of 1881), s. 90.*] No one but an executor or administrator has power to apply to the Court under s. 90 of the Probate and Administration Act (V of 1881). Where a testator directed his executor to manage the whole of his estate through the Court of Wards:—*Held*, that there was no restriction on the executor's power of sale, and that the provisions of s. 90 of the Probate and Administration Act did not apply to his case:—*Held*, also, that an order on an application under s. 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell, was without jurisdiction, and appealable under s. 15 of the Letters Patent. *Hurrish Chunder Chowdhry* v. *Kali Sundari Debi*, I. L. R. 9 Calc. 482, applied. IN THE GOODS OF INDRA CHANDRA SINGH; SARASWATI DASSI *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[23 Calc. 580

2.—*Executor, Power of disposition by—Probate and Administration Act (V of 1881), s. 90.*] Under s. 90 of the Probate and Administration Act, the power of an executor to dispose of any property is subject to any restriction imposed by the will appointing him. Where there is no such restriction, the power to dispose is not dependent on the permission of the Court, and the Court has no jurisdiction in the matter. IN THE GOODS OF NUNDO LALL MULLICK.

[23 Calc. 908

3.—*Executor de son tort—What constitutes an executor de son tort—Liability of such executor to creditors of deceased—Intermeddling with estate after order for probate made but before issue of*

EXECUTOR—*continued.*

probate—Receipt of assets with consent of person appointed executor—Succession Act (X of 1865), s. 255—Consent decree—Parties.] Probate is necessary to complete the title of a rightful executor, and until it is actually taken out, a person intermeddling with the assets constitutes himself executor *de son tort*. *R*, the executrix appointed by the will of one *J*, applied to the High Court for probate of the will, and *N*, the widow of *J*, entered a caveat. By a consent decree, dated 25th February, 1892, it was ordered that probate should issue to *R*, and by the same decree, it was declared that *R*, as executrix, was not entitled to a sum of Rs. 4,178-10-0 or any other sum or sums of money to be received from the B.-B. & C. I. Railway Co. In that same year, *N* obtained payment from the Railway Co. of the said sum of Rs. 4,178-10-0 and of another sum of Rs. 166 due to the deceased. On the 3rd February, 1893, probate was issued to *R*. In 1894, the plaintiff sued *N* and *R* for Rs. 165 due to him by the deceased *J*. He claimed against *N* as executrix *de son tort*:—*Held*, that probate not having actually issued to *R* at the time that *N* received the money from the Railway Co., although an order for probate had been made, she had by receiving it constituted herself executrix *de son tort*, and was, therefore, liable to the plaintiff and could be joined as co-defendant with *R* in the suit:—*Held*, also, that the fact that by the terms of the consent decree of the 25th February, 1892, she was allowed to receive the money and retain it, was no defence. The consent decree did not bind the creditors or free her from her responsibility to them to the extent of the assets which she received. NAVAZBAI *v.* PESTONJI RATANJI.

[21 Bom. 400

4.—*Executor who has administered the estate without probate required to lodge will in Court and obtain probate.*] One *T V* died in 1883, and by his will appointed his brother *T* sole residuary legatee and also his executor, and he directed that, in case of *T's* death, *D* (*T's* son) should be executor. *T* accordingly acted as executor until his death in May, 1886, and then his son *D* continued to administer the estate, but neither of them obtained probate of the will. *T* left a will whereby he appointed his two sons, *D* and the applicant, his executors and also his residuary legatees. In June, 1895, the applicant, stating that he was one of the residuary legatees of *T*, applied for a citation to be issued to *D* directing him to bring in and prove the will of *T V*. In reply, *D* submitted that there was no necessity to prove the will; that the estate was fully administered, and that he had no funds left in his hands out of which to pay the costs of probate:—*Held*, that the executor, *D*, must lodge the will in Court, and that, on the applicant paying half the estimated cost of obtaining probate (including probate duty), *D* should take out probate of the will. DAYABHAI TAPIDAS *v.* DAMODAR TAPIDAS.

[20 Bom. 227

5.—*Right of executors to have sums lent to the estate allowed them on account—Limitation.*] The

EXECUTOR—*concluded.*

right of executors, who have used their own monies for the purposes of the estate to be allowed them in their accounts, cannot be affected by limitation before such accounts are taken. KRISHNARAO RAMCHANDRA *v.* BENABAI.

[20 Bom. 571

6.—*Position and rights of executors—Contract—Consideration—Gratuitous contract—Contract to pay remuneration to executor for performance of his duties—Remuneration not coming out of assets of estate—Administrator-General's Act (II of 1874), s. 56—Illegal contract as being opposed to public policy—Contract Act (IX of 1872), s. 23.*] The defendant's brother appointed as executrix and executors of his will his wife, *K*, together with the plaintiff and another, and the plaintiff being unwilling to undertake the duties of executor without remuneration, *K* offered him, and he accepted, a sum of Rs. 125 a month for acting as executor; but before any formal agreement was entered into, the defendant's *dewan* on her behalf proposed to the plaintiff that he should accept a *perwana* for Rs. 125 a month from the defendant instead of from *K*, to which the plaintiff agreed, and he accordingly received from the defendant a *perwana* in which she agreed to pay him from her own pocket the above sum monthly as long as he continued to perform the duties of executor of the estate of her brother, in which she was interested. In pursuance of this agreement, the plaintiff, in conjunction with the other executor, took out probate of the will, and the stipulated remuneration was paid for some time and then ceased. In a suit for his salary for the portion of the time during which he had acted as executor and had not been paid:—*Held*, there was good consideration for the agreement. Such an agreement, moreover, was not unlawful by reason of s. 56 of the Administrator-General's Act (II of 1874), the words "receive and retain" in that section referring to the receipt or retention by an executor or administrator of commission or agency charges from the assets of the estate, and not to remuneration paid to him by a third person:—*Held*, also, that the agreement was not void under s. 23 of the Contract Act as being illegal or contrary to public policy, and a suit upon it was, under the circumstances, maintainable. NARAYAN COOMARI DEBI *v.* SHAJANI KANTA CHATTERJEE.

[22 Calc. 14

EXHIBITS, APPLICATION TO ALTER ENDORSEMENT ON.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

[21 Calc. 476

EXPECTANCY, SALE OR MORTGAGE OF.

See HINDU LAW — REVERSIONERS — POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST.

[17 All. 125

EXPECTANCY, SALE OR MORTGAGE OF—*concluded.*

See ONUS OF PROOF—HINDU LAW—ALIENATION.

[17 All. 125

FALSE CHARGE.

See ONUS OF PROOF—DAMAGES.

[19 Bom. 717

1.—*Penal Code (Act XLV of* 1860), *s.* 211—*False charge of offence punishable with death—Criminal proceedings, Necessity for institution of.*] To constitute the offence defined in the second paragraph of s. 211 of Act XLV of 1860, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the Police, the making of such charge does not amount to the institution of criminal proceedings, and the offence committed will fall within the first paragraph of s. 211, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph of that section. *Queen-Empress* v. *Pitam Rai*, I. L. R. 5 All. 215; and *Queen-Empress* v. *Parahu*, I. L. R. 5 All. 593, followed; *Karim Buksh* v. *Queen-Empress*, I. L. R. 17 Calc. 574, dissented from. QUEEN-EMPRESS *v.* BISHESHAR.

[16 All. 124

2.—*Penal Code (Act XLV of* 1860), *s.* 211—*False charge of dacoity made to a Police station-house officer—Institution of criminal proceedings.*] A false charge of dacoity was made to a Police station-house officer, who, after some investigation, referred it to the Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was now tried under Penal Code, s. 211, and was found to have acted with the intent and the knowledge therein mentioned, and he was convicted and sentenced to four years' rigorous imprisonment:—*Held*, that the prisoner had instituted criminal proceedings within the meaning of that section, and that the conviction and sentence were in accordance with law. QUEEN-EMPRESS *v.* NANJUNDA RAU.

[20 Mad. 79

3.—*Penal Code (Act XLV of* 1860), *ss.* 211, 499 *and* 500—*Falsely charging a person with an offence—Defamatory statement made by a person examined in the course of an official or departmental inquiry—Witness—Privilege—Qualified privilege—Criminal Procedure Code* (1882), *ss.* 191 *and* 197.] The complainant was Deputy Collector and first class Magistrate of Bijapur. Certain petitions said to emanate from the accused were received by Government charging the complainant with bribery and corruption. Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to inquire into the matter. Mr. Monteath enforced the attendance of the accused by writing to the Police, who brought the accused before him. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. Mr. Monteath examined other witnesses, and reported the result of his inquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation, under s. 500 of the Penal Code (XLV of 1860) in having stated to Mr. Monteath, in the course of the inquiry, that he (the complainant) had accepted a bribe from him. The trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first framed charges both under ss. 211 and 500. But subsequently he struck out the charge of defamation under s. 500 and convicted the accused under s. 211 of making a false charge. On appeal, the Joint Sessions Judge was of opinion that the charge under s. 211 could not be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate it. As regards the charge of defamation, he was of opinion that the fact of bribery was not proved. But he held that, in making the statement to Mr. Monteath, the accused had acted in good faith, and that his case fell under excep. 8 to s. 499 of the Penal Code. He therefore, reversed the conviction under s. 211 and acquitted the accused of defamation under s. 500 of the Code. Against this order of acquittal, Government appealed to the High Court:—*Held*, that the accused was guilty of defamation:—*Held*, also, that s. 211 of the Penal Code had no application to the present case. The accused was brought before Mr. Monteath against his will. He did not make any complaint before that officer; and though what he stated, in answer to questions put to him, was defamatory, the imputations did not constitute a "false charge" within the meaning of s. 211, as he did not intend to set the criminal law in motion. *Per* RANADE, J.—The words "falsely charging" in s. 211 must be construed along with the words which speak of the "institution of proceedings." These latter words are obviously used in a technical and exclusive sense, and the same restricted sense must be given to the words which relate to a false charge as implying a false complaint. *Karim Buksh* v. *Queen-Empress*, I. L. R. 17 Calc. 574, followed:—*Held*, also, that, in the absence of sanction from Government, the inquiry held by Mr. Monteath, the District Magistrate, was not a taking cognizance of the offence. QUEEN-EMPRESS *v.* KARIGOWDA.

FALSE CHARGE—*concluded.*

[19 Bom. 51

FALSE DECLARATION.

See MARRIAGE ACT, 1872, S. 18.

[16 All. 212

FALSE EVIDENCE.

		Col.
1.	Generally	... 431
2.	Fabricating False Evidence	... 431
3.	Contradictory Statements	... 431

See SANCTION FOR PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION.

[19 Bom. 362

FALSE EVIDENCE—*continued.*

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[19 Mad. 18

[20 Mad. 339

(1) GENERALLY.

1.—*Penal Code* (*Act XLV of* 1860), *ss.* 191 *and* 193—*Witness in trial which had to be heard de novo owing to incompetence of juror—Oaths Act* (*X of* 1873), *s.* 14.] On the trial of certain prisoners on a charge of dacoity, a witness gave false evidence, and was committed under s. 477, Criminal Procedure Code, for trial on a charge under s. 193, Penal Code. After such committal, it was discovered that one of the jurors empanelled in the dacoity case was deaf and partly blind; and thereupon, under s. 282, Criminal Procedure Code, the case was tried *de novo* before a competent jury:—*Held*, that the fact that the trial for dacoity had to be commenced *de novo* did not exonerate the prisoner from the obligation to speak the truth imposed by s. 14 of the Indian Oaths Act X of 1873 (1) in the first trial, which became abortive owing to the incompetency of one of the jurors, nor prevent the statement made by the witness at the first trial from being made the subject of an offence under s. 191 or 193 of the Penal Code. QUEEN-EMPRESS *v.* VIRASAMI

[19 Mad. 375

2.—*False statement made by a convict in an affidavit in support of an application for revision of the order by which he was convicted—Criminal Procedure Code* (1882). *s* 342—*Penal Code, s.* 193.] *Held*, that a person, seeking by an application in revision to get rid of a conviction standing against him, is incapable of tendering his own affidavit in support of such application, and consequently that, if he did tender such an affidavit, he could not be prosecuted for false statements which might be contained therein. *Queen-Empress* v. *Subhayya*, I. L. R. 12 Mad. 200, referred to. IN THE MATTER OF THE PETITION OF BARKAT.

[19 All. 200

(2) FABRICATING FALSE EVIDENCE.

3.—*Penal Code* (*Act XLV of* 1860). *s.* 218—*Public servant framing an incorrect record to save himself from legal punishment.*] A public servant who does that which, if done to save another from legal punishment, would bring the public servant within s. 218 of the Penal Code, has equally committed the offence punishable under s. 218 if the person whom he intends to save from legal punishment is himself. *Queen-Empress* v. *Gauri Shankar*, I. L. R. 6 All. 42, *quoad hoc* overruled; *Queen-Empress* v. *Girdhari Lal*, I. L. R. 8 All 653, referred to. QUEEN-EMPRESS *v.* NAND KISHORE.

[19 All. 305

(3) CONTRADICTORY STATEMENTS.

4.—*Form of charge—Alternative charges—Statement made to a Police-officer during a Police investigation—Contradictory statement made before a Magistrate holding a preliminary inquiry—Penal Code* (*Act XLV of* 1860), *s.* 193—*Separate charges.*] Where a person has made two contradictory statements, one to a Police-officer making an investigation under Chap. XIV of the Code of Criminal Procedure (Act X of 1882), and the other to a Magistrate holding a preliminary inquiry, he cannot be charged, and still less convicted, on an alternative charge. In such a case if there is no other evidence at the trial but the contradictory statements made by the accused, separate charges cannot be framed. QUEEN-EMPRESS *v.* MUGAPA.

[18 Bom. 377

5.—*Penal Code* (*Act XLV of* 1860), *s.* 193—*Fabricating false evidence—Report made by Amin executing Civil Court's decree that he had been obstructed—Similar report to Police—Subsequent contradictory deposition in Court—Alternative charges—Form of charge.*] *Held*, that a report made by an Amin of a Civil Court deputed to give possession of certain property in execution of a decree as to his having been obstructed in so doing to the Court executing the decree, and a similar report made to the Police, would not, even if false, amount to the fabrication of false evidence within the meaning of s. 193 of the Indian Penal Code, and, consequently, where such Amin was charged in the alternative with making the two reports as above, and also a third and inconsistent statement in respect of which he might have been charged under s. 193, that he was wrongly charged, and that it was necessary to prove the falsity of the third statement. QUEEN-EMPRESS *v.* AJUDHIA PRASAD.

[17 All 436

FALSE INFORMATION TO POLICE.

See ONUS OF PROOF—DAMAGES.

[19 Bom. 717

FALSE STATEMENT IN APPLICATION FOR LICENSE.

See BENGAL MUNICIPAL ACT, 1884, s. 133.

[22 Calc. 131

"FAMILY" MEANING OF.

See LUNATIC.

[23 Calc. 512

"FASLI" YEAR.

See DEED—CONSTRUCTION.

[18 All. 388

FEES.

——, Customary, payable to temple.

See MADRAS RENT RECOVERY ACT, S. 11.

[17 Mad. 43

—— of Counsel, Receipt for.

See STAMP ACT, SCH. II, ART. 15.

[16 All. 132

FEES—*concluded.*

—— on succession, Non-payment of.

See BENGAL TENANCY ACT, s. 16.

[24 Calc. 241

FERRY, PLYING UNSOUND BOAT ON.

See CAUSING DEATH BY NEGLIGENCE.

[16 All. 472

FINE.

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 49.

[18 Bom. 400

See CATTLE TRESPASS ACT, s. 22.

[22 Calc. 139

See COMPENSATION — CRIMINAL CASES FOR LOSS OR INJURY CAUSED BY OFFENCE.

[22 Calc. 139
[19 Mad. 238

See RAILWAYS ACT, s. 113.

[18 Bom. 440
[20 Mad. 385

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.

[18 Bom. 400, 440
[18 Mad. 490
[17 All. 67

See SESSIONS JUDGE, JURISDICTION OF.

[18 Bom. 751
[18 All. 301

See VILLAGE CHOWKIDARS ACT, S. 8.

[23 Calc. 421

—Recovery of fine when ordered to be refunded—Portion of fine paid as compensation to complainant—Sentence of fine set aside—Recovery of compensation from complainant—Procedure—Criminal Procedure Code (1882), *ss.* 545 *and* 547.] On a sentence of fine being passed, it was ordered, under s. 545 of the Code of Criminal Procedure, that a portion of the fine should be paid as the compensation to the complainant, and it was so paid. Subsequently the sentence was set aside in revision by an order of the High Court which directed that the fines should be refunded:—*Held*, that the sum which had been paid to the complainant was recoverable under this order as part of the original fine, and that it was recoverable by process under s. 547 of the Code and not by suit in a Civil Court. MUTASADDI *v.* MANI RAM.

[19 All. 112

FISHERY, RIGHT OF.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO — DISPUTES AS TO RIGHT OF WAY, WATER, &c.

[23 Calc. 55, 557

FISHERY, RIGHT OF—*concluded.*

—Right of fishery in tidal navigable river—Right of Government in navigable rivers and fishery therein—Grant by Government of right to private individuals.] As regards this side of India, the bed of a tidal navigable river is vested in the Crown; and the right of fishery in such river, as also the bed of the river itself, may be granted by Government (whether it be in the exercise of their prerogative as the Crown or as representing the public) to private individuals to be held by them as private property, subject to the right of navigation and such other rights as the public has in such rivers. *Dŏe d. Seebkristo* v. *East India Co.*, 6 Moo. I. A. 267; *Gureeb Hossein Chowdhree* v. *Lamb*, S. D. A. 1859, p. 1357; *Bagram* v. *Collector of Khulloa* Gap No. W. R. (1864). p. 243; *Chunder Jaleah* v. *Ram Churn Mookerjee*, 15 W. R. 212; *Baban Mayacha* v. *Nagu Shravucha*, I. L. R. 2 Bom., 19; *Prosunno Coomar Sircar* v. *Ramcoomar Paroee*, I. L. R. 4 Calc. 53; and *Hari Das Mal* v. *Mahomed Jaki*, I. L. R. 11 Calc. 434, referred to. Value as evidence of the *thakbast* map in such a case discussed. *Syam Lal Sahu* v. *Luchman Chowdhry*, I. L. R. 15 Calc. 353; and *Syama Sunderi Dassya* v. *Jagobundhu Sootar*, I. L. R. 16 Calc. 186, referred to. SATCOWRI GHOSH MONDAL *v.* SECRETARY OF STATE FOR INDIA.

[22 Calc. 252

FISHERY, SUIT FOR RENT OF.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[24 Calc. 449

FORECLOSURE.

See CASES UNDER MORTGAGE — FORECLOSURE.

See PARTIES—PARTIES TO SUITS—BENAMIDARS.

[24 Calc. 644

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS.

[16 All. 464

——, Decree for.

See FOREIGN COURT, JUDGMENT OF.

[19 Mad. 257

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

[16 All. 269

FOREIGN COURT, JUDGMENT OF.

1.—*Suits in British Court on judgments and decrees of Courts established in recognised foreign States—Territorial jurisdiction of each separate State in personal actions—Civil Procedure Code* (1882), *ss.* 431 *and* 434—*Right of suit.*] Jurisdiction being properly territorial, and attaching, with certain restrictions, upon every person permanently or temporarily resident within the territory, does not follow a foreigner, after

FOREIGN COURT, JUDGMENT OF—*continued.*

his withdrawal thence, living in another State. As to land within the territory, jurisdiction always exists, and may exist over moveables within it; and exists in questions of *status*, or succession, governed by domicile. But no territorial legislation can give jurisdiction, which a Court of a foreign State ought to recognize, over an absent foreigner owing no allegiance to the State so legislating. In a personal action, to which none of the above causes of jurisdiction apply, a decree pronounced by a Court of a foreign State *in absentem*, the latter not having submitted himself to its authority, is by international law a nullity. Not to the Courts of the State in which the cause of action has arisen, nor in cases of contract to those of the *locus solutionis*, should resort be had by the plaintiffs, but to the Courts of the State in which the defendant resides, the Courts of the latter State having jurisdiction in all personal actions. *Ex-parte* decrees for money were made in the territories of the ruling Chief of Faridkot, a State in subordinate alliance with the Government of India, against a person who had been employed by that State within its territories but had before suit brought relinquished his employment, had left the State, and was then, at the time when he was sued, resident in another State of which he was the domiciled subject:—*Held*, that these decrees were a nullity by international law, and could not receive effect in a British Indian Court. *Becquet* v. *Macarthy*, 2 B. & Ad. 951, distinguished. The judgment of BLACKBURN, J., in *Schibsby* v. *Westenholz*, L. R. 6 Q. B. 155, referred to and explained. There is no ground for supposing, as did one of the Courts below, that no suit will lie upon the judgment of a recognized foreign Indian State. GURDYAL SINGH *v.* RAJA OF FARIDKOT.

[22 Calc. 222
[L. R. 21 I. A. 171

2.—*Decree "in absentem"—Submission to jurisdiction—Suit on judgment of foreign Court.*] The plaintiff brought a suit in the French Court at Karikal against the defendant, a British subject, resident in British India. The defendant employed a Vakil to defend the suit, but, on the case coming on for hearing, the Vakil stated he had no instructions, and an *ex-parte* decree was passed. An application by the defendant to have the decree set aside was held to be time-barred. The plaintiff now brought a suit on the judgment of the French Court to recover the amount decreed to him:—*Held*, that the suit was not maintainable for the reason that the decree had been passed against the defendant *in absentem* by a foreign Court, to which he had not submitted himself. *Semble*—Even if the foreign judgment had not been entirely invalid as against the defendant, the British Court would have had jurisdiction to disallow an item of claim allowed by the foreign Court on account of prospective damages which was unsupported by evidence. SIVARAMAN CHETTI *v.* IBURAM SAHEB.

[18 Mad. 327

FOREIGN COURT, JUDGMENT OF—*concluded.*

3.—*Effect of foreclosure decree passed by a foreign Court—"Lis pendens"—Transfer of Property Act (IV of 1882), s. 52—Notice of existence of decree.*] In 1887, *K*, who resided at Singapore, mortgaged certain lands in the Madura district to *S*, who sued and obtained a conditional foreclosure decree on the 13th June, 1892, in the Supreme Court of Singapore. This decree became absolute on the 3rd October, 1892. On the 12th August, 1892, *K* hypothecated the said land to *P*. In a suit brought by *S*, *held*, that the decree of a foreign Court cannot directly affect land situated in British India; that, at the date of the mortgage, there was no decree purporting to operate upon the land; that the doctrine of *lis pendens* was inapplicable. *Quære:* Whether *P* would have been bound if he had had notice of the existence of the conditional decree at the date of his mortgage. PALANI CHETTI *v.* SUBRAMANYAN CHETTI.

[19 Mad. 257

4.—*Suit on a foreign judgment—Jurisdiction of foreign Court—Residence of defendant—Constructive residence.*] The plaintiff having obtained against defendant a judgment in the District Court of Kandy, now sued in British India to enforce it. It appeared that the defendant was domiciled and ordinarily resident in British India, and that he had not appeared to defend the suit at Kandy, and was not at the date of that suit, or subsequently, even temporarily resident in Ceylon: but he was a partner in a firm which carried on business at Kandy, and he was interested in lands at that place which he had visited once or twice:—*Held*, that the Court at Kandy had no jurisdiction over the defendant. NALLAKARUPPA SETTIAR *v.* MAHOMED IBURAM SAHEB.

[20 Mad. 112

FOREIGN COURT, PROCEEDINGS OF.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[17 Mad. 14

FOREIGN STATE, PROMISSORY NOTE EXECUTED ON.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[17 Mad. 262

FOREIGN TERRITORY, OFFENCE COMMITTED IN.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

See WRONGFUL CONFINEMENT.

[19 Bom. 72

FOREIGN AND NATIVE RULERS.

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

[21 Bom. 351

FOREIGNERS.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[19 Bom. 741

° *See* WARRANT OF ARREST.

[18 Bom. 636

—*Act III of* 1864, *Validity and application of*—*Powers of legislation of the Governor-General in Council*—*Indian Councils Act* (*Statute* 24 *and* 25 *Vict. c.* 67), *s.* 22—*Criminal Procedure Code* (1882), *s.* 491—*Arrest*—*Habeas corpus* — *Statute* 31 *Car. II, c.* 2.] On the 3rd July, 1894, certain foreigners resident in Bombay having been arrested by the Police and sent to jail under warrants issued under ss. 3 and 4 of Act III of 1864, they applied to the High Court and obtained a rule *nisi* under s. 491 of the Criminal Procedure Code (X of 1882) and under Stat. 31, Car. II, c. 2 (Habeas Corpus Act), calling on the Superintendent of the Jail to show cause why they should not be set at liberty. In the affidavits filed in showing cause against the rule the only reason suggested for their arrest was that they were connected with loose women residing in a certain district of Bombay. It was contended for the prisoners that their arrest and imprisonment were illegal (1) inasmuch as Act III of 1864 was *ultra vires* of the Indian Legislature; (2) that the Act being intended only to secure the "peace and security" of British India was in this case improperly applied:—*Held* (1) that Act III of 1864 was not *ultra vires* of the Governor-General of India in Council; (2) that it was rightly applied in the case of the foreigners in question, although their residing in Bombay may not have been likely to have affected or endangered the peace and security of British India. *Per* STARLING, J.—Section 3 of Act III of 1864 gives the fullest power to the Government to order any foreigner to remove himself from British India The Government is the sole judge of what is necessary for the peace and security of British India, and, if it acted in accordance with the letter of the Act, the Court could not inquire into the sufficiency of its reasons for so acting. ALTER CAUFMAN *v.* GOVERNMENT OF BOMBAY.

[18 Bom. 636

FOREST ACT.

See MADRAS FOREST ACT.

FOREST ACT (VII OF 1878).

——, s. 10.

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

[21 Bom. 396

FOREST ACT (VII OF 1878)—*continued.*

——, s. 45.—*Drift and stranded timber, Right of Government, under s.* 45, *to collect and store, with obligation to notify*—*Meaning of "julkur"*—*Test of res judicata*—*Civil Procedure Code* (1882), *s.* 13—*Construction of decree.*] The object of Chap. IX of the Indian Forest Act, 1878, is to regulate the rights of owners, and not to deprive them of their property in drift and stranded timber and wood. Section 45 of that Act does not divest the owner of, or transfer to the Government, any right therein. Nor does anything in the Act affect the right of the Government to take possession and dispose of timber and wood whereof they are the undisputed owners. But, upon certain conditions only, the Government have a right to the possession of any drift and stranded timber and wood, collected by their officers, which, however, may be claimed by the true owner, who may be a person holding a *julkur* or water right, comprehending those things. The conditions are that the officers of Government shall store the timber in the manner, and issue the notifications, required by the Act. In case of such procedure not being followed, and the wood being treated as the property of the Government, the latter are, in the event of the wood being found not to belong to them, in no better position than any other trespasser. The title to collect given to the Government by the Act is coupled with and dependent upon, the duty of giving notice to the public, in order that the true owner, whether he be a person from whom the wood has drifted away, or the owner of a *julkur*, or however he may be entitled, may claim the drifted timber in the manner, and within the time, prescribed by the Act. There is no presumptive ownership of the Government save where their officers collect, and hold, for the true owner, in the first instance, subject to the statutory duty of giving notice. The Government having taken possession of drift timber in the river Teesta as having an absolute right thereto, the zemindar, owning land on the bank, asserted by this suit his right to it, on the ground of his owning the *julkur* where the river passed by, and through, his lands. This *julkur*, as he showed, had been decreed in 1882 to his predecessor in estate, in a suit against the Government:—*Held*, that this term, signifying water-right, was aptly used to include the right to drift and stranded timber as well as to fishing, or other interest of a similar kind in the produce of the river—a right decreed in the above suit. The rule is that where a final decree is couched in general terms, the extent to which it ought to be regarded as *res judicata* can only be determined by ascertaining what were the real matters of controversy in the cause. That the question of the right to drift and stranded timber was included in the *julkur*, decreed in 1882, was, in their Lordships' opinion, established by intrinsic evidence in the record of that suit. They concurred with the High Court that correspondence and orders by officers, of dates subsequent to the former decree, could not be received as aids to its construction. But the record showed that the right was in controversy before the Judge, and that he meant to include it in the *julkur*, which he decreed. The zemindar's claim was therefore

FOREST ACT (VII OF 1878)—*concluded.*

a judged to be established. AMRITESWARI DEBI *v.* SECRETARY OF STATE FOR INDIA.

[24 Calc. 504
[L. R. 24 I. A. 33

——, ss. 75 and 76.—*Khoti tenure—Khoti khasgi land—Right to cut trees—Dunlop's proclamation—Right of Government to rescind proclamation—Crown grant, Construction of.*] In 1824 by a proclamation, known as Dunlop's proclamation, it was declared that the owners of land in the Ratnagiri District, on which teak and other forest trees were growing or should thereafter be grown, should be the owners of these trees and might dispose of them at their pleasure without any claim on the part of Government. In 1851, however, this proclamation was rescinded by a subsequent proclamation which declared that the 'Government resumed, in regard to forest, all the seignorial rights which it possessed previously to 1823." The accused was *khot* of the village of Asgoli in the Ratnagiri District. He was charged, under s. 75, cl. (*c*) of the Indian Forest Act (VII of 1878), with the offence of cutting down two teak trees without obtaining the permission of Government as required by the rules framed by Government under the Forest Act. He contended that he was absolute owner of the trees under Dunlop's proclamation He was convicted, and applied to the High Court under its revisional jurisdiction :—*Held*, that the conviction must be reversed. The land on which the trees in question were growing was the *khoti khasgi* land of the accused, and he was therefore entitled to the benefit of Dunlop's proclamation, by virtue of which the trees thereon become his property:—*Held*, also, that Dunlop's proclamation could not be withdrawn by Government. *Collector of Ratnagiri* v. *Vyankatrao Narayan Surve*, 8 Bom. H. C. I. followed. *Per* FULTON, J.—*Khasgi* land, of which the *khot* was actually in possession, was clearly within Dunlop's proclamation, and it granted the right to teak and other trees in *khasgi* lands held by *vatandar khots* . . . . It is clear, too, that the right to trees having once been conceded could not be withdrawn by the proclamation of 1851, and it seems also manifest that the contention is untenable that the benefit of the first proclamation did not extend to the case of trees planted after its cancellation in 1851. Even though the *khot* may not be the proprietor of the soil in *khoti khasgi* lands, he is certainly the holder of an interest in it, and that interest having in 1823 been increased by the concession of all trees which he might grow thereafter, could not subsequently be reduced by the withdrawal of the right to such trees. IN RE ANTAJI KESHAV TAMBE.

[18 Bom. 670

——, s. 81.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[20 Bom. 764

FOREST OFFICER.

See BOMBAY LAND REVENUE ACT, S. .

[20 Bom. 803

See BOMBAY REVENUE JURISDICTION ACT, S. 11.

[20 Bom. 803

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[20 Bom. 764

FOREST SETTLEMENT OFFICER.

See MADRAS FOREST ACT, S. 4.

[17 Mad. 193

See PENSIONS ACT, S. 4.

[17 Mad. 193

——, Jurisdiction of.

See MADRAS FOREST ACT, S. 10.

[20 Mad. 279

FORFEITURE.

See DEED—CONSTRUCTION.

[20 Bom. 310

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[17 All. 456

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[18 Bom. 110

See CASES UNDER LANDLORD AND TENANT—FORFEITURE.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[21 Calc. 129
[20 Bom. 747

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

——, Omission of Collector to declare.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[21 Bom. 381

FORGERY.

——, Abetment of.

See ATTEMPT TO COMMIT OFFENCE.

[16 All. 409

——, Committal by Civil Court for.

See CRIMINAL PROCEEDINGS

[18 Bom. 581

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[18 Bom. 581
[16 All. 80

FORGERY—*concluded.*

—*Penal Code, ss.* 463, 464, 467 *and* 471—"*Dishonestly*"—"*Fraudulently*"—*Fabrication of a document to conceal a contemporaneous or past embezzlement.*] An accused person who was in the service of zemindars, and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the due date of a *kist* received from them a certain sum of money with no specific instruction as to its application. On receipt of that money he paid a portion only of it into the Collectorate on account of the revenue, and having done so, he then altered the *challan* given back to him showing the amount actually paid, and made it appear that a much larger amount had been paid in than was the fact. This *challan* he sent to his employer for the purpose of showing the application of the money. He was charged (1) with criminal breach of trust as a servant (s. 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid in by the altered *challan;* (2) with forgery (s. 467) in respect of the *challan;* and (3) with using a forged document (s. 471) in respect of the same document. The accused was convicted on all these charges. It was contended that the charge under ss. 467 and 471 were bad as there was no evidence to support them, and even admitting the alteration of the *challan* such alteration did not come within the term "forgery" as used in the Penal Code, not having been made with the intention of causing any wrongful gain or wrongful loss, but with the intention of screening the offence of criminal breach of trust which had been previously committed:—*Held*, further, that it is not necessary for the purpose of constituting the offence of forgery that the false document should be made with the intention of committing a fraud or dishonesty in the future, and that, if the intention with which a false document is made be to conceal a fraudulent act which has been previously committed, the intention cannot be other than to commit fraud, and the offence of forgery as defined in s. 463 is committed. The word "fraudulently" as used in s. 464 must not be taken as being the same as "dishonestly" and implying wrongful gain or wrongful loss, but must be taken to mean as "with intent to defraud." *Empress of India* v. *Jiwanand*, I. L. R. 5 All. 221; and *Queen-Empress* v. *Girdhari Lal*, I. L. R. 8 All 653, dissented from. *Queen-Empress* v *Vithal Narain Joshi*, I. L. R. 13 Bom. 515 (note); and *Queen-Empress* v *Sabapati*, I L R. 11 Mad. 411, followed:—*Held*, therefore, that upon the facts of the case there was ample evidence to show that the accused had abetted the forgery of the *challan* and had used the sum, and that he had been properly convicted of all the offences charged against him except that of the actual forgery, and that he should have been convicted of abetment of that offence. LOLIT MOHAN SARKAR *v.* QUEEN-EMPRESS.

[22 Calc. 313

FRAUD. *Col.*

1. What Constitutes Fraud and Proof of Fraud ... 443
2. Alleging or Pleading Fraud ... 443
3. Effect of Fraud ... 445

See BENAMI TRANSACTION — GENERAL CASES.

[28 Calc. 460, 962, 962 note

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[21 Bom. 198

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

[17 Mad. 304

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[20 Mad. 323

See HINDU LAW—REVERSIONERS—CONVEYANCE BY WIDOW WITH CONSENT OF REVERSIONERS.

[19 Mad. 337

See INSURANCE—LIFE INSURANCE.

[20 Bom. 99

See MADRAS REVENUE RECOVERY ACT, S. 59.

[17 Mad. 189

See MORTGAGE —REDEMPTION —RIGHT OF REDEMPTION.

[21 Bom. 396

See REGISTRATION ACT, s. 35.

[21 Calc. 872

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[17 Mad. 384
[L.R. 21 I. A. 93
[19 Bom. 821

See RES JUDICATA—RELIEF NOT GRANTED.

[24 Calc. 546

See RIGHT OF SUIT—FRAUD.

[21 Calc. 605, 612
[24 Calc. 546

See SALE IN EXECUTION OF DECREE—INVALID SALES—FRAUD.

[20 Mad. 10

See TRUST.

[18 Bom. 551

See VENDOR AND PURCHASER—FRAUD.

[18 All. 322

——, Concealment as showing.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[19 Mad. 315

FRAUD—*continued.*

See TRANSFER OF PROPERTY ACT, S. 53.

[22 Calc. 185

——, Suit to set aside deed on ground of.

See HINDU LAW—GUARDIAN—POWERS OF GUARDIANS.

[19 Bom. 593

See LIMITATION ACT, ART. 91.

[19 Bom. 593

(1) WHAT CONSTITUTES FRAUD AND PROOF OF FRAUD.

1.—*Proof of allegation of fraud.*] A plaintiff who charges another with fraud must himself prove the fraud, and he is not relieved from this obligation because the defendant has himself told an untrue story. MAHOMED GOLAB *v.* MAHOMED SULLIMAN.

[21 Calc. 612

(2) ALLEGING OR PLEADING FRAUD.

2.—*Suit under Civil Procedure Code* (1882), *s.* 283—*Right of defendant interested in taking defence to plead that decree was fraudulently obtained.*] A defendant in a suit brought under s. 283 of the Civil Procedure Code, who is connected with the judgment-debtor as being reversionary heir of the judgment-debtor's husband, or as being his co-parcener, may show that the decree, in execution of which the property in dispute was attached, was collusively obtained. *Gulibai* v. *Jagannath Galvankar*, I. L. R. 10 Bom. 659, dissented from. NARANAYYAN *v.* NAGESWARAYYAN.

[17 Mad. 389

3.—*Allegation of fraud in pleadings—Plaint, Form and contents of.*] Where fraud is charged against the defendant, the plaintiff must set forth the particulars of the fraud which he alleges. CHANVIRAPA *v.* DANAVA.

[19 Bom. 593

4.—*General allegations of fraud — Plaint, Amendment of—Evidence of fraud—Objection taken for first time in special appeal.*] Where a plaintiff seeks relief on the ground of fraud, and the plaint contains general allegations, but no specific instances of the alleged fraud, it ought to be immediately, on presentation, rejected or returned for amendment, as it does not disclose a cause of action. The plaintiff sued to recover damages caused by the defendant's fraud during his management of the plaintiff's estate from 1870 to 1884. The plaint disclosed no specific instances of the fraud imputed to the defendant. The Court of first instance, without going into evidence, rejected the plaintiff's claim on the preliminary ground that the plaintiff had no right to sue during the lifetime of his adoptive mother. In second appeal, the respondent objected that the plaint was defective. The plaintiff's pleader asked for leave to amend it by specifying certain instances of the alleged fraud:—*Held*, that the amendment could not then be allowed, and the suit must fail. When fraud is charged, the evidence must be confined to the allegations. KRISHNAJI *v.* WAMNAJI.

[18 Bom. 144

5.—*Sham transaction—Fraudulent conveyance—Suit for possession by purchaser of land—Defence that the sale to plaintiff was a sham transaction to defraud creditors.*] The plaintiff sued for possession of certain land, which he alleged he had purchased from the defendant under a registered sale-deed, dated 10th November, 1876. The defendant pleaded that the deed was a sham deed and without consideration, and had been executed by him merely to save the land from his creditors:—*Held*, that the plea was good, and that it was open to the defendant to defend his possession by showing that the real transaction between himself and the plaintiff was to defraud, whether a third party or his creditors generally. BABAJI *v.* KRISHNA.

[18 Bom. 372

6.—*Debtor and creditor—Sham sale-deed to defeat creditors—Collusive decree—Suit to declare title of fraudulent transferor in possession—Right of suit.*] *A* executed a sale-deed of his land to *B*. An attachment placed on the land was raised at the instance of *B* as vendee. The attaching creditor sued impeaching the transfer as collusive; but finally consented to a decree upholding the title of *B* who then applied to be registered as owner in the place of *A*. *A*, who remained in possession throughout, resisted the application, and now sued *B* for a declaration that he was entitled to remain on the register as owner. It was alleged and proved that the apparent sale-deed was a sham, and had been executed for no consideration with intent to defraud the plaintiff's creditors, and that the plaintiff had paid the attaching creditor to consent to the above-mentioned decree to which both he and *B* were parties:—*Held*, that the suit should be dismissed. YARAMATI KRISHNAYYA *v.* CHUNDRU PAPAYYA.

[20 Mad. 326

7.—*Suit to set aside collusive decree—Right of suit.*] The plaintiff was a Hindu who, in order to prevent his undivided son from obtaining his share of the family property, made and delivered to the defendant certain promissory notes unsupported by consideration, the agreement between them being that the defendant should obtain a decree on the notes and in execution attach and bring to sale and himself purchase the lands of the family, and should hold them at the disposal of the present plaintiff. The suit and the subsequent proceedings in Court were carried on by them collusively, the present plaintiff supplying the necessary funds. The son then sued for his share of the property, and having with the aid of his father (who had meanwhile lost his confidence in the defendant) successfully impeached the sale as collusive, obtained a decree which was executed. It had been agreed that the defendant should hold the

FRAUD—*continued.*

(2) ALLEGING OR PLEADING FRAUD—*concld.*

land at the disposal of the plaintiff, but he now refused to surrender to him his share. The plaintiff accordingly sued to recover his share of the property and for a declaration that the collusive decree against him and the subsequent proceedings in execution thereof were not binding on him:—*Held*, that it is not competent to a party to a collusive decree to seek to have it set aside, and that the plaintiff accordingly was not entitled to relief. VARADARAJULU NAIDU *v.* SRINIVASULU NAIDU.

[20 Mad. 383

(3) EFFECT OF FRAUD.

8.—*Debtor and creditor—Collusive decree—Fraud on creditors—Fraudulent purpose carried out—Suit by legal representative of the fraudulent transferor and judgment-debtor to set aside conveyance and restrain execution of decree.*] *A*, with the intention of defeating and defrauding his creditors, made and delivered a promissory note to *B* without consideration, and collusively allowed a decree to be obtained against him on the promissory note, and conveyed to *B* a house in part satisfaction of the decree; and it appeared that certain of *A's* creditors were consequently induced to remit parts of their claims. *A* having died, his widow and legal representative under Hindu law, now sued *B* to have the promissory note and the conveyance set aside, and to have the defendant restrained by injunction from executing the decree:—*Held* (by SUBRAMANIA AYYAR, *J.*) (1) that the plaintiff was not entitled to relief in respect of the promissory note and the decree, although she was not personally a party to the fraud, inasmuch as she claimed through *A* by whose contrivance and collusion the defendant was enabled to obtain the decree; (2) that the plaintiff was not entitled to have the sale set aside inasmuch as there had been at least a partial carrying into effect of the illegal purpose in a substantial manner. RANGAMMAL *v.* VENKATACHARI.

[18 Mad. 378

In the same case on appeal *held* (by COLLINS, C. J., and BENSON, J.) that the plaintiff was not entitled to relief, for *A* if alive, could not have claimed to have his own fraudulent acts set aside, and the plaintiff was in no better position than he would have been. *Quære:* Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud. RANGAMMAL *v.* VENKATACHARI.

[20 Mad. 323

9.—*Money advanced on hundi—Fraudulent misrepresentation—Suit before due date of hundi—Right of suit.*] The defendants obtained advances of money on *hundis* by making untrue representations, knowing them to be untrue, and knowing that without them they could not have got the money:—*Held*, that the plaintiffs were entitled to rescind the contract and claim immediate repayment before the due date of the *hundis*.

FRAUD—*concluded.*

(3) EFFECT OF FRAUD—*concluded.*

There is no reason why the principle that fraud vitiates all agreements should not be applied to debts evidenced by *hundis*, promissory notes, or other negotiable instruments, if the facts show that the loans were contracted on the faith of fraudulent misrepresentations made by a debtor to a creditor. BABOOLALL *v.* JOY LALL.

[24 Calc. 533

FREIGHT.

See INTERPLEADER SUIT.

[18 Bom. 231

FRESH SUIT, PROCEEDINGS IN NATURE OF.

See APPEAL—ORDERS.

[22 Calc. 880

FURTHER INQUIRY.

See CRIMINAL PROCEDURE CODE, s. 437.

[22 Calc. 573

See NUISANCE—NUISANCE UNDER CRIMINAL PROCEDURE CODE.

[24 Calc. 395

GAMBLING.

——, Articles used for purpose of.

See MADRAS POLICE ACT, 1888, s. 42.

[19 Mad. 209

GAMBLING ACT (III OF 1867).

1.—s. 6.—"*Instrument of gaming*"—*Cowries.*] *Held*, that cowries are not "instruments of gaming" within the meaning of s. 6 of Act III of 1867. QUEEN-EMPRESS *v.* BHAWANI.

[18 All. 23

2.—s. 6.—*Evidence of house being a common gaming-house—Instruments of gaming—Cowries.*] *Held* that the mere finding of cowries in a house searched in pursuance of a warrant issued under Act III of 1867 would not raise the presumption that the house was used as a common gaming-house; but evidence that cowries were used in that house as instruments whereby to carry on gaming would bring the house within s. 6 of the Act. *Queen-Empress* v. *Bhawani*, I. L. R. 18 All. 23, referred to. QUEEN-EMPRESS *v.* BALA MISRA.

[19 All. 311

GAMING-HOUSE.

See MADRAS TOWNS NUISANCES ACT, s. 73.

[18 Mad. 46

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868).

——, s. 2, cl. 5.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[22 Calc. 33

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*concluded.*

See TRANSFER OF PROPERTY ACT, S. 107.

[22 Calc. 752

——, s. 6.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[16 All. 259

See COSTS — SPECIAL CASES — SMALL CAUSE COURT SUITS.

[24 Calc. 399

[21 Bom. 779

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[21 Calc. 940

[22 Calc. 767

——, s. 7.

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.

[22 Calc. 176

GHATWALI TENURE.

1.—*Right of succession to ghatwali tenure in Beerbhoom—Bengal Regulation XXIX of* 1814, *s.* 2—"*Descendants,*" *Meaning of—Impartible property—Separate property—Hindu law, Mitakshara.*] *Ghatwali* tenures in Beerbhoom are tenures to be held in perpetuity and are descendible from generation to generation subject to certain conditions and obligations, and it would be inconsistent with the true character of these tenures to hold that the Legislature intended that they should devolve on issue of the body only, and not on heirs generally according to the law which may govern such succession. The word "descendants" therefore in s. 2 of Bengal Regulation XXIX of 1814, is not to be construed in its restricted meaning, but includes the widow of a deceased *ghatwal* who may therefore be one of his heirs. *Lall Dharee Roy* v. *Brojo Lall Singh*, 10 W. R, 401; and *Kustoree Koomaree* v. *Monohur Deo*, W. R. Gap. No. (1864) 39, referred to. Where a *ghatwali* tenure was admittedly impartible and governed by Mitakshara law, and the only heirs were the widow and the brother of the late *ghatwal*:—*Held* (it being found on the evidence that the brothers had separated, and that the *ghatwali* tenure was the exclusive property of the late *ghatwal*), that his widow was his heiress according to Mitakshara law. Although, according to the decision of the Privy Council in *Chintamun Singh* v. *Nowlukho Koonwari*, I. L. R. 1 Calc. 153; 13 W. R. P. C. 21, impartible property is not necessarily separate property, yet, *Semble*, that with reference to the peculiar character of *ghatwali* tenures as described in Regulation XXIX of 1814 they were intended to be the exclusive property of the *ghatwal* for the time being and not joint family property in the proper sense of the term. CHHATRADHARI SINGH *v.* SARASWATI KUMARI.

[22 Calc. 156

GHATWALI TENURE—*concluded.*

2.—*Liability to attachment in execution of decree—Execution for rents due to ghatwal during his lifetime.*] After deduction of all necessary outgoings from the total rents due to a *ghatwal*, the residue, being his own absolute property, may be attached in execution of a personal decree against him. *Bally Dobey* v. *Ganei Deo*, I. L. R. 9 Calc. 388, distinguished; *Kustoora Kumari* v. *Benoderam Sen*, 4 W. R. Mis. 5, approved. RAJKESHWAR DEO *v.* BUNSHIDHUR MARWARI.

[23 Calc. 873

GIFT.

See HINDU LAW—ADOPTION—SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS.

[19 Bom. 428

See CASES UNDER HINDU LAW—GIFT.

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION OF MEMBERS—MANAGER.

[19 Bom. 803

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS.

See CASES UNDER MAHOMEDAN LAW—GIFT.

See ONUS OF PROOF—HINDU LAW—ALIENATION.

[17 All. 1

See WILL—CONSTRUCTION.

[18 Bom. 1

[19 Bom. 221, 770

——, Deed of.

See ONUS OF PROOF—DEED, EFFECT AND OPERATION OF.

[25 Calc. 78

[L. R. 24 I. A. 186

See REGISTRATION ACT, S. 17.

[18 Bom. 92

—— for charitable purposes.

See MAHOMEDAN LAW—ENDOWMENT.

[22 Calc. 619

—— of family property.

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION OF MEMBERS—MANAGER.

[18 Bom. 177

—— to a class.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[18 Bom. 7

[20 Bom. 571

GIFT—*continued.*

—— to Hindu widow.

See HINDU LAW — REVERSIONERS—ARRANGEMENT BETWEEN WIDOW AND REVERSIONERS.

[22 Calc. 354

1.—*Transfer by gift—Failure to prove alleged inequitable advantage taken by donee over donor—Contract Act (IX of 1872), ss. 16 and 17.*] The heir to a share in an ancestral estate, out of possession, and at a time when he expected that his right would be contested by another claimant, made a gift of his title to his brother's son, providing that he, the donor, should have nothing to do with the cost of getting possession, After the donee had obtained possession, the donor sued to have the gift set aside. The gift, having been maintained in the first Court, was set aside by the Appellate Court, on the ground that, it having been made without consideration and imprudently as regarded the donor's interests, he had had no opportunity to obtain any advice from an independent person, but had only had that advice which came from, or was given on behalf of, the donee. Thus the gift was not an equitable transaction which the Court should enforce. The Appellate Court had, however, affirmed the finding of the first Court, that the donor, with full knowledge of the contents of the deed, had voluntarily executed it, and that he had been apprehensive of incurring costs in litigation in getting possession of his inherited share:—*Held*, that the Appellate Court was in error in taking it that the question was whether the transaction was an equitable one which that Court should enforce. The defendant was not asking the Court to enforce the deed; and the reason why the gift was without consideration was explained by the circumstances. The reasons given by the Appellate Court for reversing the decision of the first Court were insufficient. It did not appear that unsound advice was given to the donor by, or on behalf of, the donee, or that confidence was reposed by the donor, so as to bring the case within s. 16 of the Indian Contract Act, 1872. There was only the donor's statement that he had confidence which was not sufficient proof of it. Whether a gift made as this had been should be set aside, as being inequitable between the parties, would depend on the circumstances existing at the time of the gift, and not on subsequent events. GANGA BAKSH *v.* JAGAT BAHADUR SINGH.

[23 Calc. 15

[L. R. 22 I. A. 153

2.—*Transfer of Property Act (IV of 1882), s. 123—Gift of land—Retractation by donor prior to registration—Effect of registration contrary to wishes of donor.*] Where a donor made a gift of land to the plaintiff, but prior to registration retracted his consent, upon which the District Registrar ordered compulsory registration:—*Held*, that the donor could not be compelled to register contrary to his wishes, and that the registration was void and the gift of no effect. RAMAMIRTHA AYYAN *v.* GOPALA AYYAN.

[19 Mad. 433

GIFT—*concluded.*

3.—*Transfer of Property Act (IV of 1882), s. 127—Onerous gift to an infant—Acceptance.*] Land was given by the defendant to the wife of the plaintiff burdened with an obligation. She accepted the gift, and died in infancy leaving the plaintiff her heir. The plaintiff now sued to make good his title to the land against the donor:—*Held*, that the gift was complete as against the donor, and that the plaintiff was entitled to a decree. SUBRAMANIA AYYAR *v.* SITHA LAKSHMI.

[20 Mad. 147

GOMASTA, CARRYING ON BUSINESS BY.

See INSOLVENT ACT, S. 9.

[23 Calc. 26

GOOD FAITH.

See TRANSFER OF PROPERTY ACT, S. 53.

[20 Mad. 465

GOODS.

——, Place for delivery of.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[24 Calc. 8

[L. R. 23 I. A. 119

—— sent to agent on commission sale.

See CLAIM TO ATTACHED PROPERTY.

[21 Bom. 287

See CONSIGNOR AND CONSIGNEE.

[21 Bom. 287

GORDON SETTLEMENT, COMMUTATION OF SERVICE UNDER.

See HEREDITARY OFFICES ACT, S. 10.

[20 Bom. 423

GOVERNMENT.

See PARTIES—PARTIES TO SUITS—EJECTMENT, SUIT FOR.

[21 Bom. 229

——, Appeal by.

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

[16 All. 213

[19 Bom. 51

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 454

——, Officer of, Suit against.

See CIVIL PROCEDURE CODE, S. 424.

[20 Bom. 697

[24 Calc. 584

GOVERNMENT—*concluded.*

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 754, 773

——, Officer of, Suit to set aside order of.

See LIMITATION ACT, S. 14.

[21 Calc. 626

——, Resolution of.

See COLLECTOR.

[18 Bom. 103

——, Right of, in navigable river.

See FISHERY, RIGHT OF.

[22 Calc. 252

——, Right of, to costs.

See PAUPER SUIT—APPEALS.

[18 Bom. 454, 464

——, Right of, to property found.

See TREASURE TROVE.

[19 Bom. 668

——, Right of, to withdraw proclamation.

See FOREST ACT, SS. 75 AND 76.

[18 Bom. 670

——, Suit against.

See COSTS—TAXATION OF COSTS.

[17 Mad. 162

——, Want of sanction of.

See DECREE—FORM OF DECREE—MORTGAGE.

[20 Bom. 565

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[19 Bom. 80

GOVERNMENT PROMISSORY NOTE, SALE AND PURCHASE OF.

See CONTRACT—WAGERING CONTRACTS.

[17 Mad. 480, 496
[18 Mad. 306

GOVERNOR-GENERAL IN COUNCIL, CONSENT OF.

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

[21 Bom. 351

GRANT.

Col.

1. Construction of Grants ... 452

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[18 Mad. 266
[19 Bom. 271

GRANT—*continued.*

See SERVICE TENURE.

[22 Calc. 938

——, by Government.

See FISHERY, RIGHT OF.

[22 Calc. 252

——, Construction of.

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF AWARD.

[23 Calc. 838

—— for public purposes.

See COLLECTOR.

[18 Bom. 103

—— from Crown, Construction of.

See FOREST ACT, SS. 75 AND 76.

[18 Bom. 670

——, Implied.

See EASEMENT.

[18 Bom. 616

(1) CONSTRUCTION OF GRANTS.

1.—*Grant of portion of impartible zemindari—Absolute grant—Creation of separate estate in favour of grantee as between him and grantor—Restriction in instrument contravening Hindu law of inheritance.*] In a suit for the recovery of possession of an estate, it appeared that the estate in question had formerly formed a portion of an impartible zemindari, but had been granted, in the year 1845, by the plaintiff's father to his younger brother, in whose name the estate was registered in the Collector's books as a separate estate. The instrument of grant provided (*inter alia*) that in case of failure of self-begotten male issue in the grantee's line, the immoveable property of the grantee should be put in possession of the grantor's line. On the death of the first grantee, the property passed into the possession of his two sons, and, on the death of the elder son, it came into the possession of the younger son. On his death, without male issue, the estate passed into the possession of his widow, defendant in the present suit. The plaintiff contended that the grant made to respondent's father-in-law was a maintenance grant; that under its terms the estate reverted to his father (now deceased) on the death of respondent's husband, when there was a failure of male heirs in his branch; and that, notwithstanding the grant, the members of the two branches did not fail to be co-parceners, and that consequently the right of survivorship of the plaintiff attached to the exclusion of the defendant:—*Held* that, on the construction of the instrument of grant, the estate became, by virtue of that instrument, the separate and absolute property of respondent's branch of the family, and that the provision in that instrument purporting to create a special right of reversion in case of failure of female issue contravened the principle laid down in the case of *Tagore* v. *Tagore*, 9 B. L.

GRANT—*concluded.*

(1) CONSTRUCTION OF GRANTS—*concluded.*

R. 377; L. R I. A. Sup. Vol. 47, and was inoperative. VENKATA KUMARA MAHIPATI SURYA RAU *v.* CHELLAYAMMI GARU.

[17 Mad. 150

2.—*Inam—Shares in profits of grant—Rule as to altumga grants—Mahomedan law,*] Certain Mahomedans hypothecated to the plaintiff to secure repayment of a debt, their interest in lands, which had been enfranchised as a personal *inam*—a claim that the lands constituted the endowment of certain mosques having been rejected at the *inam* enquiry. In a suit against the executants of the mortgage and their heirs and representatives to recover the principal together with interest up to date. it was *held* that, under the circumstances of the case, the rule as to the equality of the shares of males and females in the subject of an *altumga* grant was inapplicable. BADI BIBI SAHIBAL *v.* SAMI PILLAI.

[18 Mad. 257

GRATIFICATION, OFFER TO GIVE.

See PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL.

[17 All. 498

GRIEVOUS HURT.

See RIOTING.

[24 Calc. 686

—*Proof of grievous hurt—Penal Code (Act XIV of 1860), ss. 320 and 326—Remaining in hospital for twenty days—Presumption.*] The accused were charged with causing grievous hurt. The Joint Sessions Judge, relying apparently on evidence that the injured person remained in a hospital for the space of twenty days, drew from that circumstance alone the inference that he was during that period unable to follow his ordinary pursuits, and convicted the accused under s. 326 of the Penal Code (XLV of 1860):—*Held*, reversing the convictions, that, in the absence of any evidence that the injured person was unable to follow his ordinary pursuits during the space of twenty days, such an inference could not legally be drawn. Before a conviction can be passed for the offence of grievious hurt, one of the injuries defined in s. 320 of the Penal Code must be strictly proved, and the eighth clause is no exception to the general rule that a penal statute must be construed strictly. Proof of being in a hospital for the space of twenty days cannot be taken as equivalent to proof of grievous hurt. QUEEN-EMPRESS *v.* VASTA CHELA.

[19 Bom. 247

GROUNDS OF APPEAL.

See CASES UNDER SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL.

GUARDIAN.

		Col.
1.	Appointment	... 455
2.	Duties and Powers of Guardians	... 456

GUARDIAN—*continued.*

See CUSTODY OF CHILD.

[23 Calc. 290

See HINDU LAW—GUARDIAN.

See MAHOMEDAN LAW—GUARDIAN.

—— ad litem.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[17 All. 531

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 316

[24 Calc. 25

See PARSI MARRIAGE AND DIVORCE ACT, S. 30.

[18 Bom. 366

—— ad litem, Omission to appoint.

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[23 Calc. 686

——, Application by, on behalf of minor.

See LIMITATION ACT, S. 7.

[23 Calc. 374

—— appointed under will.

PROBATE—EFFECT OF PROBATE.

[19 Bom. 832

——, Appointment of.

See LUNATIC.

[20 Bom. 659

——, Authority of.

See LIMITATION ACT, S. 20.

[18 Mad. 456

See LUNATIC.

[24 Calc. 133

——, Contract made by.

See REGISTRATION ACT, S. 77.

[24 Calc. 668

See SPECIFIC PERFORMANCE.

[22 Calc. 545

[18 Mad. 415

——, Discharge of.

See MAJORITY ACT, S. 3.

[21 Bom. 281

——, Negligence of.

See LIMITATION ACT, S. 5.

[20 Bom. 104

GUARDIAN—*continued.*

——, Order refusing to remove.

See APPEAL — ACTS — GUARDIANS AND WARDS ACT.

[20 Bom. 667
[23 Calc. 201

——, Power of.

See MAHOMEDAN LAW—GUARDIAN.

[20 Bom. 199

See PLEADER—REMUNERATION.

[17 Mad. 306

See SPECIFIC PERFORMANCE.

[18 Mad. 415

——, Removal of.

See GUARDIANS AND WARDS ACT, S. 39.

[18 Bom. 375

(1) APPOINTMENT.

1.—*Power of Court to appoint guardian of person and estate of a minor.*] The power of the Court of Chancery to appoint guardians to infants, whether such infants have property or not, is possessed by the High Court. RE JAGANNATH RAMJI.

[19 Bom. 96

2.—*Guardians and Wards Act (VIII of 1890)—Minor co-parcener in a joint Hindu family governed by the Mitakshara law—Hindu law—Guardian of person of minor.*] Under Act VIII of 1890, a guardian cannot be appointed to the property of a minor who is a member of a joint Hindu family governed by the Mitakshara law, and possessed of no separate property. A guardian of the person of such a minor may be appointed under the Act. VIRUPAKSHAPPA *v.* NILGANGAVA.

[19 Bom 309

3.—*Appointment of guardian of property of minor—Minor who is a member of a joint Hindu family.*] It is not competent to a Court under Act VIII of 1890 to appoint a guardian of the property of a minor who is a member of a joint Hindu family. *Varupakshappa* v. *Nilgangava*, I. L. R. 19 Bom. 309; and *Sham Kuar* v. *Mohanunda Sahoy*, I. L. R. 19 Calc. 301, referred to. JHABBU SINGH *v.* GANGA BISHAN.

[17 All. 529

4.—*Minor residing out of the jurisdiction of the Court—Letters Patent, High Court, cl. 17—Guardians and Wards Act (VIII of 1890), ss. 4, 7 and 9—Testamentary guardians.*] Case in which the Court refused, on a summary proceeding under cl. 17 of the Charter, to appoint a guardian of the person and property of an infant who was not a European British subject, and who was living outside the limits of the ordinary original civil jurisdiction of the Court, there being testamentary guardians in existence, and no application or suit filed to remove them. On these two last grounds the Court also refused to appoint a

GUARDIAN—*continued.*

(1) APPOINTMENT—*concluded.*

guardian of the infant's property under Act VIII of 1890. IN THE MATTER OF SRISH CHUNDER SINGH.

[21 Calc. 206

5.—*Minor residing in England—Jurisdiction of High Court.*] Where a mother residing at Poona, the widow of a deceased European inhabitant of Poona, applied to be appointed guardian of her three minor children, two of whom were residing with her, and the third, a girl of the age of 16 years, was residing in England, and to have certain payments made to her out of the estate of their deceased father on their account, and to have certain powers over their persons given to her, and to have the costs of the application paid out of the shares of the said three minor children in the hands of the Administrator-General of Bombay, the Court made the order applied for. IN RE MEAKIN.

[21 Bom. 137

6.—*Guardian ad litem—Husband and wife—Suit for divorce under Parsi Marriage Act (XV of 1865), s. 30—Minor—Age of majority.*] In a suit by a husband for divorce under s. 30 of the Parsi Marriage Act (XV of 1865), the defendant, if under the age of 21 years, although more than 18, must be deemed to be a minor, and a guardian of the defendant for the suit must be appointed. SORABJI CAWASJI POLISHVALA *v.* BUCHOOBAI.

[18 Bom. 366

(2) DUTIES AND POWERS OF GUARDIANS.

7.—*Power of guardian to sell minor's property—Guardian not appointed under special Act.*] *Quære*—Whether a guardian appointed by the Court (except under some special Act) has any authority to sell the property of his ward unless the express sanction of the Court is given. RE JAGANNATH RAMJI.

[19 Bom. 96

8.—*Guardian's power to acknowledge a debt due by the minor—Limitation Act (XV of 1877), s. 19.*] A guardian has authority to acknowledge a debt on the part of the minor, provided that the debt is not barred by limitation at the date of the acknowledgment. *Chinnaya* v. *Gurunatham*, I. L. R. 5 Mad. 169, followed; *Wajibun* v. *Kadir Buksh*, I. L. R. 13 Calc. 235, disapproved. SOBHANADRI APPA RAU *v.* SRIRAMULU.

[17 Mad. 221

KAILASA PADIACHI *v.* PONNUKANNU ACHI.

[18 Mad. 456

9.—*Power of guardian to bind his ward by personal covenants—Act XX of 1864, ss. 18 and 29—Guardian's authority to contract debts for the marriage of his ward without the sanction of the Court—Debts contracted for pilgrimage expenses—Guardian's power to acknowledge debts—Limitation Act (XV of 1877), s. 19.*] A minor cannot be bound personally by contracts entered into by a guardian which do not purport to charge his

GUARDIAN—*concluded.*

(2) DUTIES AND POWERS OF GUARDIANS—*concluded.*

estate. Act XX of 1864 gives no power to a guardian or administrator to bind his ward by personal covenants. A guardian appointed under Act XX of 1864 can pledge the property of his ward for purposes beneficial to the minor, but not as a security for money previously borrowed which the minor was under no obligation to pay. Under s. 29 of Act XX of 1864, a guardian cannot contract a debt for the marriage of his ward without the sanction of the Court. Debts contracted by the guardian of a minor for a pilgrimage not undertaken in the discharge of an urgent spiritual duty, which it was obligatory on him to perform, are not necessaries for which the minor would be held liable. A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of s. 19 of the Limitation Act (XV of 1877). *Sobhanadri Appa Rau* v. *Sriramulu*, I. L. R. 17 Mad. 221, dissented from. RANMALSINGJI *v.* VADILAL VAKHATCHAND.

[20 Bom. 61

10.—*Liability of minor for debt incurred by guardian on his behalf—Ancestral trade carried for benefit of minor by the minor's natural guardian.*] Under Hindu law, where an ancestral trade descends upon a minor as the sole member of the family, and the ancestral trade is carried on under the superintendence of the minor's natural guardian, for the benefit of herself (she having a claim for maintenance) and the said minor, the minor will be bound by all acts of the guardian necessarily incidental to or flowing out of the carrying on of the trade. RAMPARTAB SAMRATHRAI *v.* FOOLIBAI.

[20 Bom. 767

GUARDIANS AND WARDS ACT (VIII OF 1890).

See CASES UNDER GUARDIAN.

See PROBATE—EFFECT OF PROBATE.

[19 Bom. 832

——, s. 1, cl. 2.—*Scheduled Districts Act (XIV of 1874)—Agency rules—Superintendence of High Court—Civil Procedure Code* (1882), *s.* 622.] A petition of appeal was presented to the Governor in Council against an *ex-parte* order made by the Agent to the Governor in the scheduled district of Vizagapatam, the ground of the petition being that the petitioner's Vakil had not been heard. The appeal was referred to the High Court:—*Held* (1) that the Guardians and Wards Act, 1890, is in force in the Agency tracts, although no notification to that effect had been made under the Scheduled Districts Act; (2) that the High Court had jurisdiction to set aside the *ex-parte* order. CHAKRAPANI *v.* VARAHALAMMA.

[18 Mad. 227

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concluded.*

——, s. 30.

See REGISTRATION ACT, S. 77.

[24 Calc. 668

——, s. 31.

See SPECIFIC PERFORMANCE.

[22 Calc. 545

——, s. 39.—"*Instrument*"—*Construction of statute—Decree of Civil Court—Removal of guardian.*] The word "instrument" in s. 39 of the Guardians and Wards Act (VIII of 1890) means instruments *ejusdem generis* with a will, and a decree of a Civil Court is not an instrument within the contemplation of the section. BAI HARKOR *v.* BAI SHANGAR.

[18 Bom. 375

——, ss. 47 and 48.

See APPEAL—ACTS.—GUARDIANS AND WARDS ACT.

[20 Bom. 667
[23 Calc. 201

——, s. 52.

See MAJORITY ACT, S. 3.

[21 Bom. 231

——, s. 53.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[24 Calc. 25

GUJARAT TALUQDARS ACT (BOMBAY ACT VI OF 1888).

——, s. 31.

See DECREE—FORM OF DECREE—MORTGAGE.

[20 Bom. 565

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[19 Bom. 80
[20 Bom. 565

HABEAS CORPUS.

See CUSTODY OF CHILD.

[23 Calc. 290

See FOREIGNERS.

[18 Bom. 636

HANDWRITING, COMPARISON OF.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

[16 All. 157
[L. R. 21 I. A. 6

HÂT.

See TRANSFER OF PROPERTY ACT, S. 107.

[22 Calc. 752

HATHCHITTA, SUIT ON.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[23 Calc. 851

HEREDITARY ALLOWANCE.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—IMMOVEABLE PROPERTY.

[21 Bom. 387

——— attached to office, Deed of gift of.

See REGISTRATION ACT, S. 17.

[18 Bom. 92

———, Document providing for payment of.

See REGISTRATION ACT, S. 17.

[21 Bom. 387

HEREDITARY OFFICE.

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

[17 Mad. 302

[18 Bom. 516

See MAHOMEDAN LAW—KAZI.

[18 Bom. 103

[19 Bom. 250

———, Succession to.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—DAUGHTER'S SON.

[18 Mad. 420

See MADRAS REGULATION XXIX OF 1802, S. 7.

[18 Mad. 420

———, Suit for.

See LIMITATION ACT, ART. 124.

[17 Mad. 395

[24 Calc. 83

HEREDITARY OFFICES ACT (BOMBAY ACT III OF 1874).

See BOMBAY REVENUE JURISDICTION ACT, S. 4.

[18 Bom. 319

1.—S. 4.—*Hereditary Offices Act Amendment Act (Bombay Act V of* 1886), *s.* 2—"*Hereditary office*"—*Village sutar—Bombay Government Resolution No.* 512 *of* 1882.] The duties with which s. 4 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) deals are confined to duties in which Government as being resposible for the administration of the country is directly interested. The definition of "hereditary office" does not extend to the duties of a carpenter, which, though useful to the village community, are not matters with which Government has any direct concern:—*Held*, therefore, that the village *sutar* (carpenter) does not hold an "hereditary office" within the meaning of that section. YESU *v.* SITARAM.

[21 Bom. 733

2.—s. 4 and s. 5.—*Vatandar—Person having an "hereditary interest"—Hereditary Offices Act Amendment Act (Bombay Act V of* 1886), *s.* 2.] *G*, by his will, devised all his property, which was *vatan* property, to *V*, a distant cousin. The plaintiff, as the nearest heir of *G*, claimed the property, contending that *V* had not an "hereditary interest" in the *vatan* within the meaning of s. 4 of the Bombay Hereditary Offices Act, that he was not a *vatandar* capable of taking under the will of *G* within the meaning of s 5, and that the will of *G* was therefore inoperative:—*Held*, that *V* had not "an hereditary interest" in the *vatan*, and that the devise to him was therefore inoperative. The expression in s. 4, "persons having an hereditary interest in a *vatan*," means persons having a present interest of an hereditary character in the *vatan*, and does not include persons who may have a *spes successionis* however remote. "Hereditary interest" means an interest acquired by inheritance as distinguished from an interest acquired by purchase, gift, or other modes of acquisition. CHINAVA *v.* BHIMANGAUDA.

[21 Bom. 787

———, s. 7.—*Agreement for payment by deputy to the vatandar out of the cash allowance for procuring the deputy's nomination—Hereditary Offices (Vatandars) Act (Bombay Act III of* 1874), *s.* 23.] An agreement between the *vatandar* and a deputy nominated by him for the payment by the latter to the former, in consideration of procuring such nomination, of a sum of money out of the cash allowance received by the deputy as remuneration assigned to his office, is not legal, being contrary to the spirit of s. 7 read with s. 23 of the Hereditary Offices Act (Bombay Act III of 1874). APPA *v.* SADU.

[18 Bom. 752

———, s. 9.

See COLLECTOR.

[18 Bom. 103

See MAHOMEDAN LAW—KAZI.

[18 Bom. 103

1.—s. 10.—*Hereditary Offices Act Amendment Act (Bombay Act V of* 1886), *s.* 1—*Deshamukhi vatan—Commutation of service—Gordon settlement.*] Section 10 of the Hereditary Offices Act (Bombay Act III of 1874) applies to *deshamukhi* service *vatan* with respect to which the liability to serve has been commuted under the Gordon Settlement. BHAU *v.* RAMCHANDRARAO.

[20 Bom. 423

2.—s. 10.—*Redemption, Suit for—Possession obtained by plaintiff under decree—Decree reversed in appeal—Collector's certificate under the Hereditary Offices Act (Bombay Act III of* 1874.]

HEREDITARY OFFICES ACT (BOMBAY ACT III OF 1874)—*continued.*

Where an erroneous decree of the District Court is reversed by the High Court, and the decree of the original Court restored, the successful party has a right to be replaced in the same position as if the District Court had not made an erroneous decree. If in obtaining this right he is restored to possession of *vatan* land, such a restoration does not fall within the scope of s. 10, Bombay Act III of 1874. *Rachapa* v. *Amingovda*, I. L. R. 5 Bom. 282, referred to. VENKATESH NARASINHA *v.* GOVINDRAO.

[21 Bom. 55

———, s. 13.—*Hereditary service vatan—Office of Kazi—Rozina allowance, its liability to attachment and sale in execution of a decree—Pensions Act (XXIII of 1871), s. 4.*] The office of *kazi* is not a hereditary service *vatan* under Bombay Act III of 1874. Plaintiff obtained a money-decree against *H*, and in execution sought to attach and sell a decree obtained by *H* against *M*, which entitled *H* to receive annually a certain portion of the *rozina* allowance paid by Government to *M* as *kazi*. *H* contended that the *rozina* allowance was paid to *M* and his family for service as *kazi*, and that, therefore, it was not liable to the process of a Civil Court under s. 13 of Bombay Act III of 1874. This contention was upheld by both the lower Courts:—*Held*, that as the *kazi's* office was not a hereditary service *vatan*, plaintiff's rights to attach the decree obtained by *H* against *M* was not barred by s. 13 of Bombay Act III of 1874:—*Held*, also, that, as *H* was not liable to serve as *kazi*, it was not open to him to urge that the allowance in question was appropriated as service remuneration, and was not, therefore, transferable:—*Held*, also, that, as the decree sought to be attached was passed before the Pensions Act (XXIII of 1871) came into force, plaintiff's *darkhast* was not barred for want of a certificate under s. 4 of the Act. DHARAMDAS SAMBHUDAS *v.* HAFASJI.

[19 Bom. 250

See BABA KAKAJI SHET SHIMPI *v.* NASSARUDDIN.

[18 Bom. 103

———, s. 17.—*Vatan—Collector's power to determine the amount of payments of a fluctuating character—Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (c)—Right of suit—Jurisdiction of Revenue Court—Jurisdiction of Civil Court.*] The payments referred to in s. 17 of Bombay Act III of 1874 are those mentioned in s. 4, namely, "customary fees or perquisites in money or in kind whether at fixed times or otherwise." It is the commutation of these customary and fluctuating payments that is provided for by ss. 17—21. But the Collector has no power under s. 17 to impose new burdens on the landowner in cases where the payment being constant already there is nothing to determine. Plaintiff was the *inamdar* of a certain village. Defendant No 3 was the *vatandar kulkarni* of the village. He enjoyed for the performance of his duties some *inam* lands and a cash allowance of Rs. 5 paid annually by the *inamdar*. In 1884 defendant No. 3 having failed to perform the service in person or by deputy, the Collector appointed defendant No. 2 to act as *kulkarni*. Defendant No. 2 officiated from 20th November, 1884, to 4th December, 1886. On the application of defendant No. 2 the Collector increased his remuneration according to the scale fixed for Government villages, known as the Wingate scale, and ordered plaintiff to pay the increased remuneration, so as to make up the amount due under that scale. On 26th September, 1890, the Collector recovered the sum of Rs. 171 from the plaintiff by attachment of his property. The plaintiff thereupon sued the Secretary of State for India in Council to recover this amount as being illegally levied. The defendant pleaded that the Collector, having determined the amount of defendant No. 2's remuneration under s. 17 of Bombay Act III of 1874, the plaintiff had no cause of action against him, and that the suit was barred under s. 4, cl. 3 of Act X of 1876:—*Held*, that, as the cash payment made by the plaintiff to the *vatandar* was certain, and not of a fluctuating or indeterminate character, the Collector had no power to increase the remuneration of the officiator under s. 17 of Bombay Act III of 1874:—*Held*, also, that the suit was not barred by s. 4 (*c*) of Act X of 1876. ANANTACHARYA *v.* SECRETARY OF STATE FOR INDIA.

[19 Bom. 581

———, s. 23.

See s. 7.

[18 Bom. 752

———, s. 67.

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

[18 Bom. 516

HEREDITARY OFFICES ACT (BOMBAY ACT V OF 1886).

See CASES UNDER HEREDITARY OFFICES ACT.

———, s. 2.

See MAHOMEDAN LAW—INHERITANCE.

[21 Bom. 118

See STATUTES, CONSTRUCTION OF.

[21 Bom. 118

HIGH COURT, JURISDICTION OF.

		Col.
1.	High Court, Bombay—Civil	... 463
2.	High Court, N.-W. P.—Civil	... 463

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[22 Calc. 717

See COSTS—TAXATION OF COSTS.

[18 Bom. 189

See INSOLVENT ACT, S. 5.

[21 Bom. 405

HIGH COURT, JURISDICTION OF— *continued.*

See INSOLVENT ACT, S. 9.

[21 Bom. 297

See JUDGE OF HIGH COURT, APPOINTMENT OF.

[16 All. 136

See REVISION—CIVIL CASES — SMALL CAUSE COURT CASES.

[21 Bom. 250

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[17 Mad. 167

See TRUST.

[18 Bom. 551

——, Minor residing out of.

See GUARDIAN—APPOINTMENT.

[21 Calc. 206
[21 Bom. 137

(1) HIGH COURT, BOMBAY—CIVIL.

1.—*Jurisdiction over Consular Court of Zanzibar —Power of revision—Superintendence of High Court—Appellate Court, Power of—Civil Procedure Code* (1882), *s.* 622—*Bombay Civil Courts Act* (*XIV of* 1869), *ss.* 9 *and* 10—*Zanzibar Order in Council*, 1884, *Arts.* 7, 8, 9, 21, 27 *and* 30.] *Held*, by the majority of the Full Bench (JARDINE, J., dissenting), that the High Court at Bombay has no power of revision over civil cases tried by the Consular Court at Zanzibar, though it is authorized to hear appeals from the decisions of that Court as a District Court by the Zanzibar Order in Council of 1884. A power of revision is not an incident of appellate powers, but, on the contrary, can only be exercised where there is no appeal; and had it been intended to give such powers to the High Court at Bombay, it would necessarily have been expressly provided for. *Per* JARDINE, J.—Under any circumstances, the Consular Court at Zanzibar is bound to obey a writ issued by the High Court for certifying the papers of a civil case. Under ss. 9 and 10 of the Bombay Civil Courts Act (XIV of 1869) taken with Art. 21 of the Zanzibar Order in Council of 1884 and s. 622 of the Civil Procedure Code (Act XIV of 1882), the High Court is competent to exercise revisionary jurisdiction in civil matters tried by the Consular Court at Zanzibar. KHOJA SIVJI *v.* HASHAM GULAM.

[20 Bom. 480

(2) HIGH COURT, N.-W. P.—CIVIL.

2.—*Appeal from decree of District Judge in Oude —Order dismissing suit for dissolution of marriage —Divorce Act* (*IV of* 1869). *ss.* 3, *sub-section* (3). 8, 9, 13, 17 *and* 55—*Oude Civil Courts Act* (*XIII of* 1879), *s.* 27—*Oude Courts Act* (*XIV of* 1891), *s.* 8—*N.-W. P. and Oude Act* (*XX of* 1890). *s.* 42—*Notification* 1203, *dated* 23*rd September*, 1874—*Statute* 28 *Vict. cap.* 25, *s.* 3.] The High Court of Judicature for the North-Western Provinces has no jurisdiction to entertain an appeal from the

HIGH COURT, JURISDICTION OF— *concluded.*

(2) HIGH COURT, N.-W. P.—CIVIL—*concld.*

decree of a District Judge in Oude dismissing a suit for dissolution of marriage. *Morgan* v. *Morgan*, I. L. R. 4 All. 306, overruled. PERCY *v.* PERCY.

[18 All. 375

HIGH COURT, POWER OF.

See BENGAL MUNICIPAL ACT, 1884, s. 133.

[22 Calc. 131

See CRIMINAL PROCEEDINGS.

[23 Calc. 610

See CRIMINAL TRESPASS.

[22 Calc. 391

See DIVORCE ACT, S. 55.

[20 Bom. 362

See EVIDENCE ACT, S. 167.

[19 Bom. 749

See REVISION — CRIMINAL CASES—GENERALLY.

[22 Calc. 131, 391

See REVISION — CRIMINAL CASES — MISCELLANEOUS CASES.

[16 All. 80
[18 Mad. 402

See REVISION—CRIMINAL CASES—QUESTIONS OF FACT.

[21 Calc. 931
[22 Calc. 998
[19 Bom. 714

See SANCTION FOR PROSECUTION — POWER TO GRANT SANCTION.

[22 Calc. 487

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE —LEAVE TO SUE.

[18 Mad. 236

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749
[20 Bom. 215

—— after dismissal of suit on appeal.

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

[22 Calc. 1011
[L. R. 22 I. A. 203

HIGH COURT, NORTH-WESTERN PROVINCES, CONSTITUTION OF.

See JUDGE OF HIGH COURT, APPOINTMENT OF.

[16 All. 136

HINDU LAW.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

[17 Mad. 9

See GHATWALI TENURE.

[22 Calc. 156

See REGISTRATION ACT, S. 50.

[18 Bom. 332

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

HINDU LAW—ADOPTION.

		Col.
1.	Requisites for Adoption	465
	(*a*) Authority	465
2.	Who may or may not Adopt	466
3.	Who may or may not be Adopted	467
4.	Second, Simultaneous, and Conditional Adoptions	468
5.	Effect of Adoption	469

See DECLARATORY DECREE, SUIT FOR—REVERSIONERS.

[20 Bom. 202

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[18 Mad. 53, 145

See HINDU LAW—CUSTOM—ADOPTION.

[19 Mad. 127

See HINDU LAW — CUSTOM — AFFILIATION OF SON.

[17 Mad. 287

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[18 Mad. 277

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[20 Bom. 718

See LIMITATION ACT, ART. 118.

[22 Calc. 609

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[19 Bom. 809

(1) REQUISITES FOR ADOPTION.

(*a*) AUTHORITY.

1.—*Adoption by widow without special authority.*] *Semble*—A Hindu widow can give her son in adoption without special authority from her husband. GURULINGASWAMI *v.* RAMALAKSHMAMMA.

[18 Mad. 53

2.—*Power to adopt—Validity of power to widow and executors to adopt—Exercise of such power by widow with consent of the surviving executor.*] A testator by his will authorised and empowered his wife to adopt a son in the following words: "I hereby authorize and empower my wife and executrix, and my executors and trustees, to whom I give full permission and liberty to adopt after my decease a son, and in case of his death during his minority, or on attaining his full age, and without leaving male issue, to adopt a second son and in case of his death during minority or on attaining such age and without leaving male issue to adopt a third son, and no more, &c.:—*Held*, the power of adoption was valid. The testator associated the other executors with his wife for the purpose of insuring a wise exercise of her discretion in the selection of a son for adoption and not with the intention of making it an essential condition of adoption that they should take a part in the ceremony of adoption, from which under the Hindu law, they were precluded:—*Held*, also, the power was given to the executors *quâ* executors, and therefore survived to the holders for the time being of the office of executors; the death of one of them before the power was exercised did not therefore render the power void. The power was validly exercised by the wife adopting with the consent of the surviving executor. The mere fact of the surviving executor not having actually and physically taken in adoption was not a failure to comply with the terms of the power. AMRITO LALL DUTT *v.* SURNOMOYEE DASSEE.

[24 Calc. 589

(2) WHO MAY OR MAY NOT ADOPT.

3.—*Adoptive mother under pollution—Adoptive mother of same gotram as natural father—Subsequent datta omam—Absence of natural father at datta homam—Validity of adoption—Estoppel.*] In a suit to recover possession of certain land to which the plaintiff claimed title as the adopted son of a deceased Saraswati Brahman, it appeared that he had been taken in adoption by the widow of the deceased acting on the authority of her late husband, that *datta homam* was performed subsequently, and that the plaintiff had since been recognized as the adoptive son of the deceased and had acted accordingly during a period of twenty-five years. The defendant was in possession under a claim of title as a reversionary heir, the widow having died shortly before suit. It appeared further (1) that the widow was under pollution at the time of the plaintiff's adoption, but the pollution had ceased at the time of the *datta homam;* (2) that the natural father was not present at the time of the *datta homam*, but his wife took part in the ceremony with his consent: *Semble*, neither of the last mentioned circumstances invalidated the adoption, but *quære:* Whether the adoption was not invalid for the reason that the plaintiff's adoptive mother was by birth a member of the same *gotram* as his natural father:—*Held*, on the evidence, that the defendant was estopped from denying the validity of the adoption. SANTAPPAYYA *v.* RANGAPPAYYA.

[18 Mad. 397

4.—*Adoption by a mother after the death of her son who has left neither child nor widow.*] Under the Hindu law a mother is competent to adopt when her son dies leaving no widow or other heir nearer than herself. GAVDAPPA *v.* GIRIMALLAPPA.

[19 Bom. 331

HINDU LAW—ADOPTION—*continued.*

(3) WHO MAY OR MAY NOT BE ADOPTED.

5.—*Only son—Only son given in adoption by his widowed mother.*] The plaintiff sued for a declaration of the invalidity of an adoption made by the widow of a deceased Hindu. It appeared that the alleged adopted son was an only son:—*Held*, that the adoption was not invalid under Hindu law. GURULINGASWAMI *v.* RAMALAKSHMAMMA.

[18 Mad. 53

6.—*Adoption of an only son—Validity of such adoption among Lingayats—Custom of Lingayets.*] According to the custom of *Lingayats* in the districts of Dharwar and Bijapur the adoption of an only son is valid. BASAVA *v.* LINGANGAUDA.

[19 Bom. 428

7.—*Adoption of only son—Effect of his afterwards becoming not the only son.*] The adoption of a person who at the time of his adoption is an only son, is invalid. The fact that other sons are afterwards born to his parents, does not validate his adoption. RAIJI JADAV *v.* BAI MATHURA.

[19 Bom. 658

8.—*Adoption of only son of divided brother—Lingayats—Adoption in dwyamushyayana form.*] Amongst *Lingayats* the *dwyamushyayana* form of adoption is not obsolete. The adoption can take place in cases in which brothers are divided as well as where they are joint. CHENAVA *v.* BASANGAVDA.

[21 Bom. 105

9.—*Cousin on maternal side—Adoption by one of the regenerate classes of a mother's sister's son—Benares School of Law.*] *Held* by EDGE, C. J., and KNOX, BLAIR and BURKITT, JJ. (BANERJI and AIKMAN, JJ., dissenting)—The Hindu law of the School of Benares does not prohibit an adoption amongst the three regenerate classes of a sister's son, of a daughter's son, or of a son of the sister of the mother of the adopter, and consequently the onus of proving that such an adoption is prohibited by usage is upon him who alleges that it is illegal. The authority in the School of Benares of the Dattaka Mimansa of Nanda Pandita considered. The Mimansa is not on questions of adoption an "infallible guide" in the School of Benares, and is not followed when it imposes on the right of adoption restrictions not to be found in the recognised authorities of the School of Benares:—*Held* by BANERJI, J. (AIKMAN, J., concurring)—The adoption by a Hindu belonging to one of the three regenerate classes of his mother's sister's son is prohibited according to the Hindu law of the Benares School. Such prohibition is not merely directory, but the adoption is absolutely interdicted and void and cannot be validated by the rule of *factum valet*:—*Held*, also, by BANERJI, J.—That the Dattaka Chandrika and the Dattaka Mimansa are works of paramount authority on questions relating to adoption, as well in those parts of India which are governed by the law of the Benares School as elsewhere. BHAGWAN SINGH *v.* BHAGWAN SINGH.

[17 All. 294

HINDU LAW—ADOPTION—*continued.*

(4) SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS.

10.—*Second adoption—Relinquishmen by first adopted son in favour of his adoptive mother of his rights as adopted son—Release.*] The plaintiff was adopted in 1880 by *K*, the widow of one *G*. In June, 1885, he executed a document which recited that he and *K* had not been on amicable terms, and that his adoption had consequently been cancelled, and that she had adopted another son (defendant No. 1) to whom she had given all rights of heirship, and declared that, in consideration of Rs. 200 paid by *K*, he delivered back to her the rights which he had obtained by virtue of his adoption and heirship. *K* died in October, 1885, and the plaintiff brought this suit, as adopted son, to recover the property of *G*. The first defendant, who had been adopted by *K* subsequently to the plaintiff's adoption, contended that he had been validly adopted, and that he was entitled to the property. He relied (*inter alia*) upon the document executed by plaintiff in June, 1885:—*Held*, that the plaintiff could not renounce his status as adopted son, although he might give up his right of inheritance, and that, whatever estate became vested in *K* by the release came to the plaintiff on her death either as the adopted son of *G* or as heir of *K*:—*Held*, also, that the defendant's subsequent adoption was invalid, and that nothing would pass to him by force of such adoption. MAHADU GANU *v.* BAYAJI SIDU.

[19 Bom. 239

11.—*Adoption by a mother after the death of her son who has left neither child nor widow—Adoption by a grandmother without the consent of her daughter-in-law.*] Under the Hindu law a mother is competent to adopt when her son dies leaving no widow or other heir nearer than herself. A Hindu of the Sudra class died, leaving him surviving his mother and a paternal grandmother. After his death his grandmother adopted the defendant. Subsequently to this adoption the deceased's mother adopted the plaintiff. Thereupon both plaintiff and defendant claimed the deceased's estate:—*Held*, that the plaintiff was entitled to succeed. The deceased's mother having succeeded as heir to her son, her mother-in-law could not by any adoption divest her of her rights as such heir without her consent. The defendant's adoption was therefore invalid. GAVDAPPA *v.* GIRIMALLAPPA.

[19 Bom. 331

12.—*Conditional adoption—Gift by adoptive father at the time of adoption—Gift binding on adopted son.*] Where a Hindu at the time of taking a son in adoption made a gift of a portion of his ancestral property to his daughters, and the deed of gift as well as the adoption deed were executed on the same day, and they mutually referred to each other:—*Held*, that the plaintiff's natural father having been a party to the deed of adoption which referred to the deed of gift executed along with it, the case fell under the

HINDU LAW—ADOPTION—*continued.*

(4) SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS—*concld.*

category of conditional adoptions which are allowed by law:—*Held*, also, that the deed of gift to defendants Nos. 2 and 3 was valid and binding on the plaintiff. *Quære:* Whether the *dwayamushayana* form of adoption has become obsolete in the southern districts of the Presidency of Bombay. BASAVA *v.* LINGANGAUDA.

[19 Bom. 428

See CHENAVA *v.* BASANGAVDA.

[21 Bom. 105

(5) EFFECT OF ADOPTION.

13.—*Effect of an adoption by a co-widow after the estate has been vested in the other widow—Divesting of estate—Sale in execution of decree—Saleable interest.*] A Hindu, governed by the Mitakshara law, died, leaving him surviving two widows, *G* and *B*, and a son, *S*, by *G*. By a will, he authorised his widow, *B*, to adopt a son, in the event of *S* dying unmarried; but he made no disposition of his property, which was left to devolve according to Hindu law. *S* died unmarried in the year 1290 (1883), and *B* adopted a son in the same year, to which adoption *G* was not a party. In the year 1296 (1889), in order to liquidate debts of their husband, the widows executed a mortgage bond in favour of one *F*, who obtained a decree in 1299 (1892). In execution of that decree, the mortgaged properties were sold and purchased by a third party. On an application made by the auction-purchaser to set aside the sale, on the ground that the judgment-debtors had no saleable interest in the property, as it had, upon the adoption, vested in the adopted son:—*Held*, that as an adopted son is not entitled to claim as preferential heir, the estate of any other person besides his adoptive father, when such estate has vested before his adoption in some heir other than the widow who adopted him, the adoption by *B* could not have the effect of divesting *G* of the estate which had devolved upon her as heir of her son, and, if that was so, it could not be said that the judgment-debtors had no saleable interest in the property, and therefore the sale could not be set aside:—*Held*, also, that *G* was not under any such religious obligation to give her assent to the adoption by *B* as should have the effect of divesting her of the estate. *Lakshman Dada Naik* v. *Ramchandra Dada Naik*, I. L. R. 5 Bom. 48; L. R. 7 I. A. 18; *Bhoobun Moye Debia* v. *Ram Kishore Acharjee Chowdhry*, 3 W. R. P. C. 15; 10 Moo. I. A. 279; *Annammah* v. *Mabbu Bali Reddy*, 8 Mad. H. C. 108; *Drobomoyee Chowdhrain* v. *Shama Churn Chowdhry*, I. L. R. 12 Calc. 246; *Mondakini Dasi* v. *Adinath Dey*, I. L. R. 18 Calc. 69; and *Surendra Nandan* v. *Sailaja Kant Das Mahapatra*, I. L. R. 18 Calc. 385, referred to. FAIZUDDIN ALI KHAN *v.* TINCOWRI SAHA.

[22 Calc. 565

14.—*Custom of adoption of Gayawals of Gaya—Effect on adopted son as to his rights in family of natural father.*] The proved practice of the Gayawals in adopting sons did not sever the adopted child from the family of his natural father, so that he did not lose his rights therein. LACHMAN LAL CHOWDHRI *v.* KANHAYA LAL MOWAR.

[22 Calc. 609

[L. R. 22 I. A. 51

HINDU LAW—ADOPTION—*concluded.*

(5) EFFECT OF ADOPTION—*concluded.*

15.—*Adoption not effectual in divesting an estate which had already vested in another person—Consent of such person to adoption.*] One *D*, a separated Hindu, died in 1852 childless, leaving three widows and a daughter-in-law, *V*, the widow of a predeceased son, *C*. *D's* estate was taken, on his death, by his widows, and ultimately became vested in *L*, the survivor of them. In 1871, while she was in possession, *V* adopted the plaintiff. In 1874, a decision was passed against *L*, in execution of which a large portion of her deceased husband's property passed into the possession of the defendant. In 1886, the plaintiff filed this suit against the defendant claiming, as the adopted son of *V*, to be entitled to all the estate of his adoptive grandfather *D*:—*Held*, that he could not recover. His adoption by *V*, which could only be to her husband *C*, could not divest *L* of the estate which had come to her as heir of her husband, *D*. On *D's* death, the estate had vested in his widows with remainder to his collateral heirs, and even if *L* had assented to the subsequent adoption of the plaintiff by *V*, his claim would not stand against the rights of *D's* collaterals who would succeed on *L's* death. From the moment that *D* died, and his estate vested in his widows, the right of his daughter-in-law *V* to adopt for the purposes of representation was at an end. DHARNIDHAR *v.* CHINTO.

[20 Bom. 250

16.—*Adoption by widow relating back to husband's death—Divesting of estate of heir who had succeeded before the adoption.*] *A* and *S* were two divided brothers. *A* died, leaving his brother *S* and a daughter-in-law (the widow of his predeceased son *G*) him surviving. On *A's* death, *S* inherited his property as his heir, but shortly afterwards *S* gave his son *M* in adoption to the widow of *G*, who duly adopted him as son to her deceased husband:—*Held*, that *M* on his adoption became not only the son of *G*, but also the grandson and heir of *A*. Having been adopted with the assent of *S* he, as the adopted grandson of *A*, divested the estate in *A's* property which had vested in *S*. *S*, by giving *M* in adoption to *G's* widow, while divesting *M* of the right to inherit as his heir, invested him with the right to inherit *A's* estate. For the purposes of inheritance an adoption may be considered as relating back to the death of the adoptive father, divesting all estates which have during the intermediate period become vested as it were conditionally in another. ANAJI *v.* RATNOJI KRISHNARAO.

[21 Bom. 319

HINDU LAW—ALIENATION.

Col.
1. Alienation by Father ... 471
2. Alienation by Mother ... 472
3. Alienation by Widow ... 472
(*a*) Alienation for Legal Necessity... 472
(*b*) What constitutes Legal Necessity 474

See HINDU LAW—CUSTOM—IMPARTIBILITY.

[18 Mad. 287

See CASES UNDER HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSIVE FROM, AND FORFEITURE OF, INHERITANCE.

[22 Calc. 864

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION OF MEMBERS—MANAGER.

[18 Bom. 177

See HINDU LAW—REVERSIONERS.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

[18 Bom. 534

[19 Bom. 36

See LIMITATION ACT, s. 7.

[17 Mad. 316

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 316

See ONUS OF PROOF—HINDU LAW—ALIENATION.

[17 All. 1, 125

[23 Calc. 763

See VALUATION OF SUIT—SUITS.

[18 Mad. 459

(1) ALIENATION BY FATHER.

1.—*Debts contracted for immoral and improper purposes—Burden of proof—Proof of immoral habits.*] In execution of a decree against the estate of *V*, his estate was sold, and it ultimately came into the hands of the plaintiff as purchaser who sued for partition. It was contended that the decree was in respect of debts contracted by *V* for immoral and improper purposes:—*Held*, that proof of immoral habits in the debtor did not throw the *onus* on to the plaintiff, and oblige him to prove that the debt was not incurred for an illegal or immoral purpose. *Chintamanrav Mehendale* v. *Kashinath*, I. L. R. 1½ Bom. 320, followed. VASUDEV MORBHAT *v.* KRISHNAJI BALLAL.

[20 Bom. 534

2.—*Conditional contract to sell family lands—Birth of vendor's son before fulfilment of condition—Vendor and purchaser—Sale while vendor is out of possession—Suit by son to set aside alienation.* A Hindu entered into a contract to sell certain land, being family property, of which he was not in possession, as soon as possession should be obtained. Before possession was obtained, a son was born to him. A decree for specific performance was passed and executed against him, the son not being brought on to the record. In a suit by the son for partition of the property in question:—*Held*, that the plaintiff had an existing right in the property which was not bound by the decree and the subsequent proceedings, and that he was entitled to the relief sought. *Semble:* That a contract for sale of land made by Hindu before a son is born to him is not binding on the son born before the transfer of the property takes place. PONNAMBALA PILLAI *v.* SUNDARAPPAYYAR.

[20 Mad. 354

(2) ALIENATION BY MOTHER.

3.—*Mortgage by a married woman of property inherited from her father—Legal necessity—Expenses of daughter's marriage.*] Ordinarily it is the duty of the father in a Hindu family to provide for his daughter's marriage; but where the father was not possessed of sufficient means to do so, and the mother, to raise money to meet the expenses of the daughter's marriage, mortgaged property of her own which had come to her from her father, it was *held* that the mortgage was made for legal necessity, and was a valid mortgage. RUSTAM SINGH *v.* MOTI SINGH.

[18 All. 474

(3) ALIENATION BY WIDOW.

(*a*) ALIENATION FOR LEGAL NECESSITY.

4.—*Power of a Hindu widow to dispose of property for religious and charitable purposes—Suit by reversioners to set aside alienation.*] A Hindu widow inheriting the estate of her deceased husband, *A*, executed a deed of endowment in favour of the *pujari* of a *thakurbari* (temple) established by her deceased husband's mother. In a suit brought by the reversionary heirs of her deceased husband after the death of the widow to set aside the alienation:—*Held*, that inasmuch as the idol was established by the mother of the deceased *K*, and he had made no provision for its maintenance, and the dedication was *primâ facie* one for the widow's own spiritual welfare, not for that of her deceased husband *K*, and because the property alienated was of considerable value, the alienation was not valid against the reversioners either on the ground of religious necessity, or that being for a pious purpose the property alienated represented only a small portion of the estate inherited by the widow. *Collector of Masulipatam* v. *Cavaly Vencata Narainapah*, 8 Moo. I. A. 500; *Lakshmi Narayana* v. *Dasu*, I. L. R. 11 Mad. 288; *Puran Dai* v. *Jai Narain*, I. L. R. 4 All. 482; and *Rama* v. *Ranga*, I. L. R. 8 Mad. 552, referred to. RAM KAWAL SINGH *v.* RAM KISHORE DAS; RAM KISHORE DAS *v.* RAM KAWAL SINGH.

[22 Calc. 506

HINDU LAW—ALIENATION—*continued.*

(3) ALIENATION BY WIDOW—*continued.*

(*a*) ALIENATION FOR LEGAL NECESSITY—*concld.*

5.—*Mortgage of zemindari lands by zemindar's widow to secure her husband's debts—Appropriation of the assets of deceased towards payment of his debts.*] In a suit on a mortgage of lands forming part of a zemindari, it appeared that the zemindar died without issue, being indebted to the plaintiff, and that his widow subsequently borrowed money from the plaintiff for her own purposes, including litigation successfully prosecuted by her to make good her claim to the estate. The widow being pressed for payment executed the mortgage sued on, and afterwards paid to the plaintiff two sums, being the proceeds of the sale of her husband's jewels and of the execution of a decree in his favour realized after his death. These sums were appropriated to the payment of the widow's debt by the mortgagee who, after her death, brought the present suit against the deceased zemindar's mother then come into possession of the estate, his undivided half-brothers being joined also as defendants:—*Held* (1) that the widow was entitled to mortgage the estate for the payment of her husband's debts and was not bound to discharge them out of income; (2) that the two payments by the widow of money belonging to the estate of the deceased zemindar should have been applied in liquidation of the husband debts. *Hurro Nath Rai Chowdhry* v. *Randhir Singh*, I. L. R. 18 Calc. 311; L. R. 18 I. A. 1, referred to. RAMASAMI CHETTI *v.* MANGAIKARASU NACHIAR.

[18 Mad. 113

6.—*Debt incurred by a Hindu widow for legal necessity, but without any charge on the ancestral property in the hands of the widow—Liability of ancestral property in the hands of the reversioners.*] The creditors of a Hindu widow cannot, after her death, have recourse to ancestral property in the hands of the reversioners, in respect of which property the widow had enjoyed only a widow's life-estate, even though the debt sued upon was incurred for legal necessity, and was one in repect of which such property might have been made liable beyond the widow's lifetime, if in fact no instrument charging the property beyond the widow's lifetime has been executed by the widow. *Shiamanand* v. *Har Lal*, I. L. R. 18 All. 471; *Ramasami Mudaliar* v. *Sellattammat*, I. L. R. 4 Mad. 375, referred to; *Ramcoomar Mitter* v. *Ichamoyi Dasi*, I. L. R. 6 Calc. 36, dissented from. DHIRAJ SINGH *v.* MANGA RAM.

[19 All. 300

7.—*Effect of partition by Hindu widows of their husbands' estate.*] Two Hindu widows, after a compromise between themselves reciting that each had obtained absolute proprietary right in her share of the husband's estate, mortgaged certain properties forming portion thereof:—*Held*, that the mortgage did not bind the husband's estate in the absence of proof both of legal necessity, and of *bonâ fide* inquiries by the mortgagee. DHARAM CHAND LAL *v.* BHAWANI MISRANI.

[L. R. 24 I. A. 183

[25 Calc. 189

HINDU LAW—ALIENATION—*concluded.*

(3) ALIENATION BY WIDOW—*concluded.*

(*b*) WHAT CONSTITUTES LEGAL NECESSITY.

8.—*Pilgrimage never carried out—Debt barred by limitation.*] The payment by a Hindu widow of her husband's debts, though barred by limitation, is a pious duty for the performance of which a Hindu widow may alienate her property. *Chimnaji Gobind Godbole* v. *Dinkar Dhondev Godbole*, I. L. R. 11 Bom. 320; and *Tarini Prasad Chatterjee* v. *Bhola Nath Mookerjee*, I. L. R. 21 Calc. 190 note, followed. In the case of an alienation by a Hindu widow of her husband's property on the ground of legal necessity, the alienee is sufficiently protected if he satisfies himself by *bonâ fide* inquiries of the existence of such necessity, although he may be in fact mistaken. He has not to see to the application of the money. Where therefore a widow borrowed money for a pilgrimage to Gya to perform her husband's *shrad* ceremonies, but the pilgrimage was never made, the debt was *held* to be recoverable out of the estate. UDAI CHUNDER CHUCKERBUTTY *v.* ASHUTOSH DAS MOZUMDAR.

[21 Calc. 190

HINDU LAW—CUSTOM.

		Col.
1.	Generally	... 475
2.	Adoption	... 475
3.	Affiliation of a Son	... 476
4.	Caste	... 476
5.	Immoral Customs	... 476
6.	Impartibility	... 476
7.	Inheritance	... 477

See CONVERTS.

[20 Bom. 53

See HINDU LAW—ADOPTION — EFFECT OF ADOPTION.

[22 Calc. 609

[L. R. 22 I. A. 51

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED.

[19 Bom. 428

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[20 Bom. 495

See HINDU LAW — ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.

[17 Mad. 199

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT.

[22 Calc. 843

[L. R. 22 I. A. 94

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

[22 Calc. 589

HINDU LAW—CUSTOM—*continued.*

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[17 Mad. 316, 422

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—AFFILIATED SON.

[17 Mad. 48

See HINDU LAW—PARTITION—PROPERTY LIABLE TO PARTITION.

[20 Bom. 495

See JURISDICTION OF CIVIL COURT—CASTE.

[17 Mad. 222

See SUCCESSION ACT, S. 331.

[19 Bom. 783

(1) GENERALLY.

1.—*Evidence of custom varying general law.*] Where it is sought to establish the existence of a custom, modifying or varying the general law, the kind of evidence that ought to be regarded is evidence showing that the right claimed by custom was more or less contested and the contest abandoned by some one who, if the custom had not existed, would have been entitled; or evidence showing that generally in the district the custom was followed to the exclusion of persons who, if it had not been for the custom, would presumably have enforced their right under the general law. RAMA NAND *v.* SURGIANI.

[16 All. 221

2.—*Evidence of custom—Judicial decision.*] *Held*, that amongst Agarwala Banias of the Saraogi sect of the Jain religion, a widow has full power of alienation in respect of the non-ancestral property of her deceased husband; but that she has no such power in respect of the property which is ancestral:—*Held*, also, that where a custom alleged to be followed by any particular class of people is in dispute, judicial decisions in which such custom has been recognised as the custom of the class in question are good evidence of the existence of such custom. *Sheo Singh Rai* v. *Dakho*, 6 N. W. 382; I. L. R. 1 All. 688, referred to; *Chotay Lall* v. *Chunnoo Lall*, I. L. R. 4 Calc. 744, explained; *Hoolas Rae* v. *Bhowani*, unreported, referred to in 6 N. W. 396; and *Behari Lal* v. *Sookbasi Lal*, unreported, referred to in 6 N. W. 398, commented upon. SHIMBHU NATH *v.* GAYAN CHAND.

[16 All. 379

(2) ADOPTION.

3.—*Adoption by temple dancing woman—Right of adopted daughter—Right of suit—Adoption made with intention of prostituting minor—Penal Code, s.* 373.] Suit by the adopted daughter of a temple dancing woman, deceased, to compel the trustees of the temple to permit the performance of a certain ceremony, in view to her entering on the duties and emoluments attached to the office of her adoptive mother. On second appeal, the High Court directed the return of a finding on

HINDU LAW—CUSTOM—*continued.*

(2) ADOPTION—*concluded.*

the issue whether the plaintiff's adoption was valid. Fresh evidence was taken, and the finding was that the adoption was made with the intention that the girl should be prostituted while she was still a minor:—*Held*, that the suit was not maintainable on the ground that the adoption of the plaintiff was made with a criminal intention. KAMALAKSHI *v.* RAMASAMI CHETTI.

[19 Mad. 127

(3) AFFILIATION OF A SON.

4.—*Illatom adoption—Inheritance*]. There is no evidence that the custom of *illatom* adoption exists among the Kondarazu caste of the Vizagapatam district. NARASIMHA RAZU *v.* VEERABHADRA RAZU.

[17 Mad. 287

(4) CASTE.

5.—*Powers of the head of a caste in respect of caste customs—Jurisdiction of Civil Court.*] In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere. A *guru*, as head of a caste, has jurisdiction to deal with all matters relating to the autonomy of caste according to recognised caste customs. *The Queen* v. *Sankara*, I. L. R. 6 Mad. 381; and *Murari* v. *Suba*, I. L. R. 6 Bom. 725, cited and followed. GANAPATI BHATTA *v.* BHARATI SWAMI.

[17 Mad. 222

(5) IMMORAL CUSTOMS.

6.—*Custom of divorce—Caste custom.*] There is nothing immoral in a caste custom by which divorce and remarriage are permissible on mutual agreement, on one party paying to the other the expenses of the latter's original marriage (*parisam*). SANKARALINGAM CHETTI *v.* SUBBAN CHETTI.

[17 Mad. 479

(6) IMPARTIBILITY.

7.—*Impartible raj—Custom of inalienability, Evidence of—Right of possessor of impartible estate to alienate—Dayadi pattam.*] The holder of the impartible *palayam* of Ammayanayakanur transferred his estate to his wife by a deed of gift. The transferor had besides a son numerous *dayadis*, and some of the latter now sued for a declaration that the gift was not binding on them. The law of succession admittedly applicable to this *palayam* was the rule of *dayadi pattam*, according to which the person entitled to succeed on the death of a *palayagar* is the senior in age of his *dayadis*, descended from one of three brothers, who originally formed a joint family together and were the founders of three lines in the family. The person entitled under this rule to inherit on the death of the transferor was one of the plaintiffs in the suit. It was contended that the *palayagar* had no proprietary right in

HINDU LAW—CUSTOM—*continued.*

(6) IMPARTIBILITY—*concluded.*

the estate, but held the office of manager merely; but this contention was overruled. It was further contended that the estate admittedly impartible was by custom inalienable also:—*Held*, on the oral and other evidence adduced in the case, and with reference to admissions made by the transferor and to his conduct, and on its appearing that eight out of the nine predecessors of the transferor had left either sons or widows, but nevertheless that for three centuries there had been no sale or gift, that the custom of inalienability was established, and that the gift in question was accordingly invalid as against the plaintiffs. *Sartaj Kuari* v. *Deoraj Kuari*, I. L. R. 10 All. 272, discussed and explained. SIVASUBRAMANIA NAICKER *v.* KRISHNAMMAL.

[18 Mad. 287

8.—*Family customs — Rajputs — Impartible estate — Primogeniture — Evidence, of converging probabilities.*] In a Rajput family, of a clan named Jadon Thakur, long settled near Agra, holding an ancestral *taluk* of zemindari villages, and having their principal dwelling-place in one of such villages, the question arose whether, by a family custom, their ancestral property descended as an impartible estate, to be possessed by the eldest son of the last inheritor, or descended as an ordinary estate, under the Hindu law, to be held jointly by the sons, each having the right to claim partition. The second of a joint family of three sons now sued the elder, the youngest being a co-defendant, but not taking either side. The evidence established a family custom that the ancestral property should descend as an impartible estate, and should be possessed by a single heir at a time, who should be the eldest son. All the lines of evidence, of differing degrees of value, converged towards the same result, the existence of this custom of impartibility, and of primogeniture. Perhaps no one of these lines, taken alone, would have been conclusive in favour of this right being established in the eldest son. But, when the whole evidence was considered, the converging probabilities were conclusive to maintain the right claimed by the eldest son to exclusive possession. NITR PAL SINGH *v.* JAI PAL SINGH.

[19 All. 1
[L. R. 23 I. A. 147

(7) INHERITANCE.

9.—*Custom excluding women from succession, Proof of — Gohel Girasias—Variance between pleading and proof—Limitation.*] *H*, a Gohel Girasia, died in or about 1866, leaving a widow *M* and a daughter *B*, and possessed of certain lands. *M* died in 1887. In 1890, the plaintiffs, who were divided collaterals of *H*, sued to recover the lands, alleging that they succeeded thereto on the death of *H*, widows and daughters being excluded from inheritance according to the custom among the Gohel Girasias. The lower Courts found that the lands were never in plaintiff's possession; that *M* held them till December, 1882, since which

HINDU LAW—CUSTOM—*concluded.*

(7) INHERITANCE—*concluded.*

time defendants 1—3 had them in their enjoyment as purchasers from her; that the custom proved excluded daughters, but not widows, from inheritance; and that the claim was within time, having been made within twelve years of the death of *M*. On second appeal to the High Court, *held* (1) that the alleged custom, excluding daughters, was not proved; (2) that the plaintiffs should not have been allowed to shift the basis of their claim from an alleged custom which excluded both widows and daughters to one which only excluded daughters; (3) that since limitation must be applied to the plaintiffs' claim as they made it, and tried to prove it, *M's* possession was adverse to them and, being for more than twelve years, barred the suit. *Basava* v. *Lingangauda*, I. L. R. 19 Bom. 428; *Bhagvandas* v. *Rajmal*, 10 Bom 241; *Shidhojirav* v. *Naikojirav*, 10 Bom. 228; and *Neelkisto* v. *Beerchunder*, 12 Moo. I. A. 523, referred to. DESAI RANCHODDAS VITHALDAS *v.* RAWAL NATHUBAI KESABHAI.

[21 Bom. 110

HINDU LAW—DEBTS.

—*Joint Hindu family—Liability of grandsons to pay interest on their grandfather's debts—Execution of decree on mortgage.*] The mortgagee from a Hindu of the joint ancestral property of the latter can enforce his mortgage against the grandson of the mortgagor for the realization of the interest secured by the mortgage in addition to the principal amount of the mortgage. *Narasimharav Krishnarav* v. *Antoji Virupaksh*, 2 Bom. 64; *Nanomi Babuasin* v. *Modhun Mohun*, I. L. R. 13 Calc. 21; *Hanooman Persaud Panday* v. *Munraj Koonweree*, 6 Moo. I. A. 393; and *Girdharee Lall* v. *Kanto Lall*, L. R. 1 I. A. 321; 14 B. L. R. 187, referred to. LACHMAN DAS *v.* KHUNNU LAL.

[19 All. 26

HINDU LAW—ENDOWMENT.

Col.

1. Dealing with, and Management of, Endowment ... 478
2. Succession in Management ... 479
3. Alienation of Endowed Property ... 480

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[23 Calc. 536
[19 Mad. 243

(1) DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.

1.—*Repairs of temple—Katlais or distinct endowments—Liability for repairs—Proof of custom in absence of endowment-deeds.*] The *panchayatdars* or managers of a temple, being directed by a Magistrate to repair the gateway of a store-house within the temple precincts and under their immediate control, spent Rs. 10-8-0 in so doing from the funds of a *katlai* or endowment of which they were managers. They then sued the trustees of two other *katlais* for recovery of the said sum on the ground that, by the usage of the temple, the cost of repairs was payable from the

defendants' income, and asked for a declaration that the duty of executing repairs fell upon the defendants' *katlais*:—*Held* that, in the absence of any endowment or trust-deed regarding the *katlais*, the decision must be found in the usage of the temple, upon proof of which judgment was given for the plaintiffs, and a declaration added to the effect that the defendants were liable for repairs to the temple so far as the surplus funds of their *katlais* should permit. VYTHILINGA PANDARA SANNADHI *v.* SOMASUNDARA MUDALIAR.

[17 Mad. 199

(2) SUCCESSION IN MANAGEMENT.

2.—*Succession as mohant of a muth at Puri—Custom—Right of a chela—Alleged disqualification of mohant to take a chela by reason of being a leper.*] Two rival claimants contested the right to succeed to the office of *mohant* of a *mourusi muth* under a customary rule of succession. Both the Courts below found that the *mohant* for the time being had power to appoint his successor from among his *chelas*; that, in the absence of appointment, a *chela*, or, if there should be more than one, the eldest *chela*, would succeed; and that, should there be no *chela*, then a *gurubhai* or *chela* of the same *guru* with the deceased *mohant* would succeed. The plaintiff's case was that he had been duly taken as a *chela* and appointed by the last *mohant*, whose title was not disputed. The defendant, who was in possession, denied that the plaintiff had ever been such a *chela*, alleging that even if the last *mohant* had attempted to take him as a *chela*, this act would have been invalid by reason of that *mohant* having been a leper. The defendant's title was that he had been taken as a *chela* by the *mohant* who had preceded the last, and had been in a position to dispute the right of succession, but had yielded it when the last *mohant* had taken office. He put forward an alleged will of the latter, which stated that he was to succeed, and relied on his possession approved by other *mohants*:—*Held*, that only a leprosy of virulent form could have disqualified the last *mohant*. As to it there was no medical evidence; but on the facts the conclusion was that there had been no such disqualification. The statements in the alleged will were not true, and it was ineffectual to alter the title, whether the last *mohant* had executed it or not, having no testamentary effect; also, what had been done after the death of the last *mohant* could not deprive the plaintiff, or entitle the defendant, there being no custom to authorize the choice of a *mohant* in that way. BHAGABAN RAMANUJ DAS *v.* RAM PRAPARNA RAMANUJ DAS.

[22 Calc. 843

[L. R. 22 I. A. 94

3.—*Fort Pagodas at Tanjore—Right of management on death of the senior widow of the late Maharaja of Tanjore.*] After the death in 1855 of the late Raja of Tanjore without male

issue, Government assumed charge of the Fort Pagodas, of which he was the hereditary trustee. Subsequently, his senior widow Her Highness Kamakshi Bayi Saheba applied that they should be handed over to her as the head of the family for the time being; the Government in 1863 made an order saying, "it is desirable that the connection of Government with the pagodas should cease; they will accordingly be handed over to Her Highness Kamakshi Bayi Saheba." The pagodas and their endowments were handed over in pursuance of that order, and were held by the senior widow till her death in 1892. On her death Government ordered that they should be placed under the *Devastanam* Committees of the circles in which they were situated. The senior surviving widow now claimed to be entitled to possession and the right of management by succession, and sued accordingly:—*Held*, that Government intended to make an absolute transfer in 1863 without any reservation of a reversionary right to make a new appointment, and that whether Her Highness Kamakshi Bayi Saheba took the trust property for a widow's estate, or as *stridhanam*, the plaintiff was entitled to succeed. KALIANA SUNDARAM AYYAR *v.* UMAMBA BAYI SAHEB.

[20 Mad. 421

(3) ALIENATION OF ENDOWED PROPERTY.

4.—*Religious offices and temple property. Transfer and alienation of—Custom.*] According to Hindu text-writers as regards public endowments, religious offices are naturally indivisible, though modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns, and of allowing alienation within certain restrictions. TRIMBAK RAMKRISHNA RANADE *v.* LAKSHMAN RAMKRISHNA RANADE.

[20 Bom. 495

5.—*Alienation of the management of a public charity—Sale of religious office—Effect of partial illegality in alienation—Suit for specific performance of agreement to partition—Form of decree.*] In a suit for specific performance of an agreement for partition, it appeared that amongst other property considered liable to partition, was the *huk* right of a public choultry and certain other lands alleged to belong to the same charity. The said *huk* right had been sold by auction to that member of the family who bid the highest price, and was purchased by the plaintiff. On a suit being brought to enforce the terms of the arrangement, *held*, that the sale by auction of the *huk* right was illegal, but that, as such illegality did not affect the other terms of the arrangement, it might be enforced as to the rest of the property. ALAGAPPA MUDALIAR *v.* SIVARAMASUNDARA MUDALIAR.

[19 Mad. 211

6.—*Alienation by de facto manager of an endowment—Limitation Act (XV of 1877), Sch. II, Art. 91.*] The principles of *Hunooman Persaud Pandey's* case, 6 Moo. I. A. 393, apply to the alienation of

HINDU LAW—ENDOWMENT—*contd.*

(3) ALIENATION OF ENDOWED PROPERTY —*continued.*

property by the *de facto* manager of an Hindu endowment. The possession of such manager cannot be treated as adverse to the endowment. *Semble:* Article 91 of Sch. II of the Limitation Act (XV of 1877) has no application to a suit to set aside such alienation. *Unni* v. *Kunchi Amma*, I. L. R. 14 Mad. 26; and *Sikher Chund* v. *Dulputty Singh*, I. L. R. 5 Calc. 363, cited. SHEO SHANKAR GIR *v.* RAM SHEWAK CHOWDHRI.

[24 Calc. 77

7.—*Powers of shebait.*] Where the father of the plaintiffs, who was a *shebait* of certain *debutter* property, granted a *mourasi mokurari* lease of a portion of that property to his *co-shebait*, the grandfather of the defendants, such lease being granted without any legal necessity:—*Held*, that such lease was wholly void. PROSUNNO KUMAR ADHIKARI *v.* SARODA PROSUNNO ADHIKARI.

[22 Calc. 989

8.—*Alienations by manager—Mirasi grant by manager without legal necessity.*] Grants of permanent under-tenures such as *mirasi, patni, mokurari*, grants by managers of endowed temple lands, are not void if made for a necessary purpose. Where lands belonging to a temple were granted in *miras* by the manager of the temple, but not for a necessary purpose, and the successor of the grantor sued to eject the assignee of the grantee:—*Held*, that the effect of such a grant was to enable the grantee to hold the lands during the lifetime of the grantor, but would not confer on him any title binding on the successor in the management of the temple lands. RAMCHANDRA SHANKARBAVA DRAVID *v.* KASHINATH NARAYAN DRAVID.

[19 Bom. 271

9.—*Religious endowments—Mortgage of endowed property by de facto manager—Debt binding on the institution.*] In a suit on a mortgage, dated April, 1880, and comprising lands forming part of the endowment of a *muth*, it appeared that the mortgagor had been the rightful manager of the *muth* until 1876 when he was outcasted and consequently forfeited his office. The present defendant was appointed in 1877 to succeed him in the office of manager, but the mortgagor remained nevertheless in possession, and a suit by the present defendant to eject him was pending at the date of the mortgage. The plaintiff now sought to enforce his rights under the mortgage against the defendant and the property, of which the defendant had been placed in possession as the result of the suit above referred to. *Per curiam:* the mortgagor was not disentitled to incur expenses so as to bind the rightful manager by the mere fact that the former was not *de jure* manager at the time the expenses were incurred, provided they were incurred for the preservation of the trust property or other justifiable purposes. On its appearing that the debt was incurred for the conduct of ceremonies in which the mortgagor, after his excommunication, was disqualified from

HINDU LAW—ENDOWMENT—*contd.*

(3) ALIENATION OF ENDOWED PROPERTY —*continued.*

taking part, and that all the circumstances of the case were known to the mortgagee:—*Held*, that the plaintiff was not entitled to recover the amount of the mortgage-debt. KASIM SAIBA *v.* SUDHINDRA THIRTHA SWAMI.

[18 Mad. 359

10.—*Right of the priest to charao (offerings to an idol)—Power of priest to bind successors by ekrar making charge on offerings for maintenance.*] In a suit upon an *ekrar* executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the *charao* (offerings to the idol) and recoverable from the defendant's successors in office:—*Held*, upon a review of the Hindu law on endowments, that where an idol is an ancient one permanently established for public worship, and the offerings made to it are more or less of a permanent character, being coins and other metallic articles, in the absence of any custom or express declaration by the donor to the contrary, the offerings are to be taken to be intended to contribute to the maintenance of the shrine with all its rites, ceremonies and charities, and not to become the personal property of the priest. *Monohar Ganesh Tambekar* v. *Lakhmiram Govindram*, I. L. R. 12 Bom. 247, approved:—*Held*, also, that the *ekrar* on which the claim was based could not be said to have been entered into for the benefit of the endowment, and whether the office of the priest was elective or hereditary no holder of it could bind his successor by any act, unless it was for the benefit of the endowment. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA.

[23 Calc. 645

11.—*Religious endowments—Gosami muth—Grant by the head of the muth to his brother for his maintenance—Suit by a successor to recover the land—Yadasts from revenue officials—Evidence—Limitation Act (XV of 1877) s. 10.*] In 1544 a village was granted to the head of a Gosami *muth* to be enjoyed from generation to generation, and the deed of grant provided that the grantee was "to improve the *muth*, maintain the charity and be happy." The office of head of the *muth* was hereditary in the grantee's family. In 1886 an *inam* title-deed was issued to the then head of the *muth*, whereby the village was confirmed to him and his successors tax-free to be held without interference so long as the conditions of the grant were duly fulfilled. *Yadasts* addressed by *tahsildars* to the then head of the *muth* in 1872 and 1882 were put in evidence to show what the object of the grant was. It was found, regard being had to usage, that the trusts of the institution were the upkeep of the *muth*, the feeding of pilgrims, the performance of worship, the maintenance of a watershed, and the support of the descendants of the grantee. From before 1840 it had been usual for the head of the *muth* for the time being to make grants to his brothers or younger sons for their maintenance. In 1842 the

HINDU LAW—ENDOWMENT—*concld.*

(3) ALIENATION OF ENDOWED PROPERTY —*concluded.*

father of the present plaintiff, being then the head of the *muth*, granted certain lands in the village above referred to to his younger brother, the deed of grant being in terms absolute. The grantee died about thirty years before the suit, and the lands in question came into the possession of his widow (defendant No 1) and a mortgagee from her (defendant No. 2) respectively. In 1863 the plaintiff's father placed certain other lands in possession of defendant No. 3 who paid rent therefor and received *pottahs* for some years from the plaintiff. In a suit by the plaintiff for possession of the lands in the possession of the defendants it was pleaded, *inter alia*, that the grant of 1843 was binding on him, and that defendant No. 3 had a right of permanent occupancy:—*Held* (1) that the suit was not barred by limitation; (2) that the *yadasts* above referred to were admissible as indicating the general consciousness as to the nature of the grant of the village; (3) that the grant was an endowment in trust for the *muth*, and the charities connected therewith, and not merely a grant of property to the original grantee, on which certain trusts were engrafted so as to impose on him an obligation to apply a portion of the income of the village to those trusts; (4) that the grant of 1843 was valid for the lifetime of defendant No. 1 (who had become by marriage part of the family of a descendant of the original grantee), but that the property comprised therein was liable to revert to the representative of the *muth* on her death; (5) that the plaintiff, although he had issued *pottahs*, was entitled to recover possession of the lands occupied by defendant No. 3, and not to receive rent from him merely. SATHIANAMA BHARATI *v.* SARAVANABAJI AMMAL.

[18 Mad. 266

HINDU LAW—GIFT.

Col.

1. Requisites of Gift ... 483
2. Construction of Gifts by Will or Deed... 484

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION OF MEMBERS—MANAGER.

[19 Bom. 803

(1) REQUISITES OF GIFT.

1.—*Necessity of possession—Attestation of deed, Effect of.*] In 1873, *R*, a Hindu, executed a deed of gift of his immoveable property to his daughter *M* (defendant No. 1). The deed was attested by the plaintiff. In 1878 *R* mortgaged to the plaintiff some of the land comprised in the deed of gift. *R*, died in that year, and in 1882 his grandson conveyed the equity of redemption to the plaintiff, who was already in possession of the mortgaged land as mortgagee. In the year 1888, the plaintiff being dispossessed by *M* and the second defendant, to whom she had sold the land, he brought the present suit to recover possession. The defendants relied upon the gift:—*Held*, that the plaintiff was entitled to possession. At the

HINDU LAW—GIFT—*concluded.*

(1) REQUISITES OF GIFT—*concluded.*

time of the mortgage to him in 1878 *R* had not completed his gift to *M* by giving possession. He was therefore in a position to give the plaintiff a good title. It had not been shown that *M* had ever been treated as the owner of the equity of redemption:—*Held*, also, that the circumstance that the plaintiff attested the deed of gift in 1873 could not affect his title, as the gift had not been completed by delivery of possession. ABAJI GANGADHAR *v.* MUKTA.

[18 Bom. 688

2.—*Delivery of deed of gift of immoveable property sufficient to pass title.*] The delivery to the donee of immoveable property of the deed of gift is sufficient to pass the title to such property to the donee without actual physical possession of such property being taken by the donee. *Manbhari* v. *Naunidh*, I. L. R. 4 All. 40, followed. BALMAKUND *v.* BHAGWAN DAS.

[16 All. 185

(2) CONSTRUCTION OF GIFTS BY WILL OR DEED.

3.—*Gifts to daughter as stridhanam.*] A Hindu executed in favour of his daughter an instrument in the following terms:—"I have hereby given to you to be enjoyed as *stridhanam* after my death 2,320 *fanams* out of 6,000 *fanams* which remain as *kanom* on the land *T*. . . The proportionate rent on 2,320 *fanams* is 365 *paras*. This quantity of paddy . . . . shall be enjoyed by you and your sons and grandsons hereditarily by receiving the same from my sons. After certain clauses restricting the mode of enjoyment and the power of alienation the instrument proceeded, "in the event of the said *kanom* being paid, that money shall be received by my sons, and shall be invested on some other property which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same." In a suit by a grandson of the donee to recover his share of the income:—*Held*, that the instrument was not invalid under Hindu law, and that the plaintiff was entitled to a decree. KRISHNA AYYAN *v.* VYTHIANATHA AYYAN.

[18 Mad. 252

HINDU LAW—GUARDIAN.

Col.

1. Powers of Guardians ... 484

See GUARDIAN—APPOINTMENT.

[19 Bom. 309

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[20 Bom. 767

See SPECIFIC PERFORMANCE.

[18 Mad. 415

(1) POWERS OF GUARDIANS.

1.—*Partition made during minority—Partition by minor's mother as guardian—Suit to set aside a partition on the ground of fraud.*] A parti-

HINDU LAW—GUARDIAN—*concluded.*

(1) POWERS OF GUARDIANS—*concluded.*

tion made by a mother as the guardian of her minor son, a member of an undivided Hindu family, is valid, and if just and legal, will bind the minor. When the minor arrives at full age, he may apply to have the division set aside if it can be shown to be illegal or fraudulent, or even if it was made in such an informal manner that there are no means of testing its validity. CHANVIRAPA *v.* DANAVA.

[19 Bom. 593

2.—*Minor's estate—Power of mother as guardian of minor to sell her deceased husband's estate—Effect of omission of the minor's name in the sale deed.*] Under Hindu law, the mother as guardian of her minor son has authority to sell her husband's estate in order to pay of his debts, and the omission of any reference to the minor in the deed of sale does not render it ineffectual if it is proved that it was her intention to deal with the son's interest, and not merely with any interest which she might have herself MURARI *v.* TAYANA.

[20 Bom. 286

HINDU LAW—INHERITANCE.

		Col.
1.	Special Laws	... 486
	(*a*) Molesalam Girasias	... 486
	(*b*) Nihangs	... 486
	(*c*) Suni Borah Mahomedans	... 486
2.	Modification of Law	... 486
3.	General Heirs	... 487
	(*a*) Bandhus	... 487
4.	Special Heirs	... 488
	(*a*) Males	... 488
	Affiliated Son	... 488
	Cousins	... 488
	Daughter's Son	... 488
	Grandsons of Daughter	... 489
	Grandson of Sister	... 489
	Half-blood relations	... 489
	(*b*) Females	... 489
	Daughters	... 489
	Grand-daughter	... 489
	Step-mother	... 490
	Widow	... 490
5.	Impartible Property	... 491
6.	Joint Property and Survivorship	... 494
7.	Divesting of, Exclusion from, and Forfeiture of, Inheritance	... 494
	(*a*) General Cases	... 494
	(*b*) Insanity	... 494
	(*c*) Leprosy	... 495
	(*d*) Marriage	... 495
	(*e*) Unchastity	... 495

See CONVERTS.

[20 Bom. 53, 181

See GHATWALI TENURE.

[22 Calc. 156

See GRANT—CONSTRUCTION OF GRANTS.

[17 Mad. 150

See HINDU LAW — CUSTOM — INHERITANCE.

[21 Bom. 110

HINDU LAW—INHERITANCE—*contd.*

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[21 Calc. 697

See SUCCESSION ACT, S. 331.

[19 Bom. 783

——, Divesting of inheritance.

See HINDU LAW—ADOPTION—EFFECT OF ADOPTION.

[22 Calc. 565
[20 Bom. 250
[21 Bom. 319

(1) SPECIAL LAWS.

(*a*) MOLESALAM GIRASIAS.

1.—*Hindu converts to Mahomedanism—Retention of Hindu law and usages.*] The Hindu law of inheritance and succession applies to *Molesalam Girasias* who were originally Rajput Hindus, but were subsequently coverted to Mahomedanism. FATESANGI JASVATSANGJI *v.* KUVAR HARISANGJI FATESANGJI.

[20 Bom. 181

(*b*) NIHANGS.

2.—*Nihangs in Gorakhpur—Alleged mode of succession to property by survivorship among a brotherhood of Nihangs—Failure to prove that the deceased, who possessed property, was a member.*] The plaintiffs claimed that they as members of a fraternity of Nihangs were, on the decease of another member, entitled to the succession to the property possessed by him according to rules of inheritance prevailing in their religious brotherhood. They thus claimed to exclude the defendant, an alleged son of the deceased. This son, who was a minor, was in possession through his mother and guardian. The Judicial Committee, without deciding as to the alleged mode of succession to property among Nihangs forming this brotherhood, affirmed the decision of the High Court that it had not been proved that the deceased was a member of the sect, and, on this ground, the dismissal of the suit was maintained. GAJRAJ PURI *v.* ACHAIBAR PURI.

[16 All. 191
[L. R. 21 I. A. 17

(*c*) SUNI BORAH MAHOMEDANS.

3.—*Hindu converts to Mahomedanism—Effect of conversion—Custom and usage of inheritance.*] The Suni Borah Mahomedan community of the Dhandpudra *taluka* in Gujarat are governed by the Hindu law in matters of succession and inheritance. BAI BAIGI *v.* BAI SANTOK.

[20 Bom. 53

(2) MODIFICATION OF LAW.

4.—*Deed containing restrictions on inheritance.*] A deed which attempts to create a new line of inheritance by excluding all heirs other than direct

HINDU LAW—INHERITANCE—*contd.*

(2) MODIFICATION OF LAW—*concluded.*

male heirs is contrary to Hindu law and invalid. LAKSHMAKKA *v.* BOGGARAMANNA.

[19 Mad. 501

(3) GENERAL HEIRS.

(*a*) BANDHUS.

5.—*Bandhu ex-parte paterna—Bandhu ex-parte materna - Son of a sister—Sister's daughters.*] Suit filed in 1891 to recover possession of certain land, the property of a Hindu, who died an infant, leaving him surviving his adoptive mother, who entered into possession and enjoyed the property till her death in 1890. It appeared (1) that in 1861 the deceased and his adoptive mother had conveyed absolutely certain of the properties to the widow of one of his first cousins on his adoptive father's side for her maintenance and that of her daughter, and that it had been assigned by her to *A*, *B* and *C*; (2) that other portions of the property had been conveyed in 1889 by the same persons, with the concurrence of *D*, as a gift to the daughters of the adoptive sisters of the deceased; (3) that *D* was the son of a sister of the adoptive mother. The plaintiffs were grandsons of the brother of the deceased's adoptive father, being respectively the sons of his daughters:—*Held* (1) that the plaintiffs being *bandhus ex-parte paterna* were preferential *heirs* to *D* who was a *bandhu ex-parte materna*; (2) that the sister's daughter's had no title whether by the law of inheritance or under the gift asserted by them. SUNDRAMMAL *v.* RANGASAMI MUDALIAR.

[18 Mad. 193

6.—*Father's sister's daughter's son—Bhinna gotra-sapinda—Succession of cognates.*] *H*, a Hindu, died leaving a widow and a son of a first cousin, *viz.*, the son of his father's sister's daughter:—*Held* that, on the death of the widow, the latter, *viz.*, the son of his father's sister's daughter, being a *bandhu* or *bhinna gotra-sapinda of H*, was entitled to succeed to his property. In regard to the succession of cognates, there seems no difference in the rules laid down in the Mayukha and the Mitakshara, and under the Mitakshara law succession depends upon propinquity and not upon religious efficacy. PAROT BAPALAL SEVAKRAM *v.* MEHTA HARILAL SURAJRAM.

[19 Bom. 631

7.—*Succession of bandhu—Priority of mother's half-brother over sons of father's paternal aunt—Mitakshara law.*] The statement of *bandhus* entitled to inherit given in the Mitakshara, Chap. II, s. 6, is not an exhaustive one. The maternal uncle of the deceased is omitted, but the sons of that uncle are specified. The omission to mention a maternal uncle does not signify that he is excluded from the first class of *bandhus*. The grounds of the judgment in *Gridhari Lal Roy* v. *Government of Bengal*, 1 B. L. R. P C. 44; 12 Moo I. A. 448; apply not only to the heirship of a maternal uncle as against the claim in default of heirs, but also apply equally to questions between nearer and more remote *bandhus*. A maternal uncle is

HINDU LAW—INHERITANCE—*contd.*

(3) GENERAL HEIRS—*concluded.*

(*a*) BANDHUS—*concluded.*

accordingly, an heir, though not specified in the Mitakshara list, and he also has priority over the sons and grandsons of the paternal aunt of the father of the deceased, who are more remote than he is. A mother's brother by the half-blood stands on the same footing as her whole brother in regard to priority over more remote *bandhus*. A half-brother may be postponed to a whole-brother, but there is no ground for his postponement to more distant kinsmen. MUTHUSAMI MUDALIYAR *v.* SIMAMBEDU MUTHUKUMARASWAMI MUDALIYAR.

[19 Mad. 405

[L. R. 23 I. A. 83

(4) SPECIAL HEIRS.

(*a*) MALES.

8.—*Affiliated son—Custom—Survivorship.*] The father (since deceased) of the second defendant took into his family an *illatom* son-in-law, who died, leaving a son. After the death of the son, one of his two daughters (who were his only children) sued to recover a one-fourth share of the property left by the second defendant's father:—*Held*, that the plaintiff was entitled to recover, in the absence of proof of a custom by which the rights of the plaintiff's father should have passed by survivorship to the second defendant. MALLA REDDI *v.* PADMAMMA.

[17 Mad. 48

9.—*Cousins—Sapindas—Bandhus—Mitakshara law—Descendants in third degree from common ancestor—Second cousins.*] The plaintiffs were descended in the third degree from *M* who was *R's* maternal great-grandfather, and *R* was descended in the third degree from *M* who was the plaintiff's maternal great-grandfather:—*Held*, with reference to the definition of *bandhu* and *sapinda* in the Mitakshara (by which School of Hindu law the parties were governed) that the plaintiffs were *R's sapindas* through his mother, and *R* was the plaintiffs' *sapinda* directly; and being thus mutually related as *sapindas*, the plaintiffs were heritable *sapindas* and *bandhus* of *R*, *ex-parte materna*, and, on his death without issue were entitled to his property as his heirs. BABU LAL *v.* NANKU RAM.

[22 Calc. 339

See SHEOBARAT KUARI *v.* BHAGWATI PRASAD.

[17 All. 523

10.—*Daughter's son — Zemindari karnam — Order of succession to hereditary office.*] A woman, who had been appointed to succeed her husband, the holder of the hereditary office of *karnam* in a zemindari, died leaving the defendant, her daughter's son, and the plaintiff, the son of her late husband's paternal uncle:—*Held*, that the defendant was entitled to succeed in preference to the plaintiff. *Krishnamma* v. *Papa*, 4 Mad. 234, followed. SEETARAMAYYA *v.* VENKATARAZU.

[18 Mad. 420

HINDU LAW—INHERITANCE—*contd.*

(4) SPECIAL HEIRS—*continued.*

(*a*) MALES—*concluded.*

11.—*Grandsons of daughter of alienor's deceased husband—Bandhus—Reversioners.*] *Held*, in a suit to set aside an alienation made by a Hindu widow of property which had been of her deceased husband in his lifetime, that the sons of the son of a daughter of the alienor's late husband were, their father and grandmother being dead, reversioners, and, as such, entitled to sue to set aside the alienation made by the widow. *Krishnayya* v. *Pichamma*, I. L. R. 11 Mad. 287; and *Babu Lal* v. *Nanku Ram*, I. L. R. 22 Calc. 339, referred to. SHEOBARAT KUARI *v.* BHAGWATI PRASAD.

[17 All. 523

12.—*Grandson of sister—Maternal uncle's son—Right to sue as reversioner.*] The plaintiff sued as the nearest reversionary heir of one *V* deceased to obtain a declaration that certain alienations made by the widow (who was defendant No. 1) in favour of defendant No. 2 were not binding on the reversion. Defendant No. 3 was the son of *V's* sister's son, and was joined in the suit, because he claimed to be a nearer heir than the plaintiff who was the son of *V's* maternal uncle:—*Held*, that both the plaintiff and defendant No. 3 were *athma bandhus* of the deceased, but defendant No. 3 was the nearer reversionary heir. BALUSAMI PANDITHAR *v.* NARAYANA RAU.

[20 Mad. 342

13.—*Half-blood relations—Distinction between whole-blood and half-blood—Sapinda relations other than brothers and heir sons.*] The distinction of whole-blood and half-blood applies, according to the rule of succession of the Mitakshara, founded on propinquity of blood, to *sapinda* relations other than the brother and his sons. *Samat* v. *Amra*, I. L. R. 6 Bom. 394, not followed. SUBA SINGH *v.* SARAFRAZ KUNWAR.

[19 All. 215

(*b*) FEMALES.

14.—*Daughters as co-heiresses—Power of alienation or dealing otherwise with property—Compromise—Reversioners.*] According to the law of the Dayabhaga, when several daughters inherit the estate of their father, they are competent to enter into any arrangement regarding their respective rights in that estate, provided that such arrangement does not interfere with the rights of the reversionary heirs except by way of accelerating their succession. KAILASH CHANDRA CHUCKERBUTTY *v.* KASHI CHANDRA CHUCKERBUTTY.

[24 Calc. 339

15.—*Grand-daughter—Daughter's daughter.*] On the principle laid down in *Nallanna* v. *Ponnal*, I. L. R. 14 Mad. 149, a daughter's daughter is, in the absence of preferential male heirs, entitled to succeed to her grandfather as a *bandhu*. RAMAPPA UDAYAN *v.* ARUMUGATH UDAYAN.

[17 Mad. 182

HINDU LAW—INHERITANCE—*contd.*

(4) SPECIAL HEIRS—*continued.*

(*b*) FEMALES—*continued.*

16.—*Grand-daughter—Daughter of predeceased son—Great-grandson of a brother—Gotraja-sapinda—Bandhu.*] According to Hindu law, the daughter of a predeceased son of the *propositus* is not a *gotraja-sapinda*, and is not entitled to inherit in preference to the great-grandson in the male line of a separated brother. VENILAL *v.* PARJARAM.

[20 Bom. 173

17.—*Stepmother—Mitakshara law—Succession to step-son.*] According to the Mitakshara school of Hindu law a step-mother, not being one of the females expressly named in the Mitakshara, and not being included under the term "mother" in Chap. II. s. 3, 1, cannot inherit from her deceased step-son. *Gauri Sahai* v. *Rukko*, I. L. R. 3 All. 45; *Jagat Narain* v. *Sheo Das*, I. L. R. 5 All. 311; *Lala Joti Lal* v. *Durani Koer*, B. L. R. Sup. Vol. 67; *Kessarbai* v. *Balab Raoji*, I. L. R. 4 Bom. 188; and *Kumaravelu* v. *Virana Goundan*, I. L. R. 5 Mad. 29, referred to. RAMA NAND *v.* SURGIANI.

[16 All. 221

18.—*Right of step-mother to succeed to her step-son in preference to his paternal first cousin.*] A step-mother succeeds to the property of her step-son in preference to the step-son's paternal uncle's son. RUSSOOBAI *v.* ZULEKHABAI.

[19 Bom. 707

19.—*Widow—Cousin's widow as heiress—Female gotraja-sapinda.*] In a suit on a mortgage executed by a Hindu, since deceased, to the plaintiff, it appeared that the mortgage premises had been the property of *A*, whose daughter, since deceased, was the mortgagor's wife and had executed a will purporting to devise the property to him. The suit was defended by *B*, who was the widow of a great-grandson of *A's* great grandfather, and she claimed title to the property against the plaintiff under the law of inheritance:—*Held*, that *B* had no title to the mortgage premises. BALAMMA *v.* PULLAYYA.

[18 Mad. 168

20.—*Widow's estate—Heirs after widow's death—Female heirs—Widow of gotraja sapinda—Stridhan.*] *N* and *H* were divided brothers. *H* died first, leaving a son named *T*. *N* afterwards died childless, leaving his widow *J*, who took possession of *N's* property. *T* died childless, leaving only his widow *B M*, who succeeded to the property on *J's* death. After the death of *B M*, the plaintiff, who was the son of *T's* sister, sued to recover the property from the defendants, who were distant *samanodaka* relations of *N*. It was contended on the plaintiff's behalf that, on *J's* death, *B M* took the property as her *stridhan* acquired by inheritance, and that the plaintiff as *bandhu* of her husband *T* was heir to *B M* who died without issue:—*Held* (confirming the decree dismissing the suit) that, on *J's* death (*N* and *H* being divided), *B M* succeeded to the property as a *gotraja sapinda*, being the widow of *T*, the nephew of

HINDU LAW—INHERITANCE—*contd.*

(4) SPECIAL HEIRS—*concluded.*

(*b*) FEMALES—*concluded.*

N. As such she took only a life-interest in the property, and had no absolute interest in it as in her *stridhan* proper. In the Presidency of Bombay female heirs who by marriage enter into the *gotra* of the male whom they succeed (including widow, mother, grandmother, the widow of a *gotraja-sapinda*, &c.), take only a widow's estate in property which they inherit from the last male owner. Whether the estate inherited by these female heirs is called their *stridhan* or not, their restricted rights over it are admitted by all schools. MADHAVRAM MUGATRAM *v.* DAVE TRAMBAKLAL BHAWANISHANHAR.

[21 Bom. 739

(5) IMPARTIBLE PROPERTY.

21.—*Rules for succession to impartible estate—Custom—Seniority—Mitakshara law—Nearness of kin—Brothers of whole and half-blood.*] In determining the right of succession to an impartible estate, the class of kindred from whom a single heir is to be selected should be first ascertained. Next, it should be seen whether family custom or *kulachar* discloses a special rule of selection, and, in default of such custom, seniority of age constitutes a title by descent to the impartible estate, by analogy to general Hindu law. Nearness of blood is no ground of preference under the Mitakshara law in case of disputed succession to coparcenary property which is partible, and it is likewise no ground of preference when such property is impartible. Where, therefore, the family property is impartible and belongs to a coparcenary family consisting of all the brothers of the deceased *propositus*, whether of the whole or half-blood, in the absence of a specification to the contrary, the brother that is entitled to succeed to the property is the eldest in years. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI.

[17 Mad. 316

22.—*Rule of selection as between an elder son by a wife of an inferior class of caste and a junior son by a wife equal in caste—Dagger wife—Meaning of the term "bhoga strees"—Custom showing preference in succession for the sons by a senior wife to those by a junior wife.*] In case of disputed succession to indivisible property between sons who are born of mothers of the same caste but of different classes therein, the right of a junior son by a first married wife, if she be of higher class, is superior to that of an elder son of a wife of lower class. Thus, when a Sudra marries a woman of his caste but of an inferior class, as a dagger wife, in addition to his wife equal in caste to him, the rule of selection is in favour of his son by the latter by reason of the mother being of a higher class. A valid custom prevails among the Kumbla zemindars whereby the son by a senior wife has a prior right of succession to a son by a junior wife, although the latter may be the elder son, seniority referring to the date

HINDU LAW—INHERITANCE—*contd.*

(5) IMPARTIBLE PROPERTY—*continued.*

of the marriage and not the age of the wife. RAMASAMI KAMAYA NAIK *v.* SUNDARALINGASAMI KAMAYA NAIK.

[17 Mad. 422

23.—*Adoption by a zemindar in conjunction with one of his two wives—Right to succeed to adoptive son.*] The holder of the impartible zemindari of Uthumalai, who married two wives, subsequently made an adoption in conjunction with his junior wife. The zemindar died in August, 1891, and the adopted son died an infant without issue in December of the same year:—*Held*, that the junior wife, having taken part in the adoption, was entitled to the impartible estate in preference to her co-wife. ANNAPURNI NACHIAR *v* COLLECTOR OF TINNEVELLY.

[18 Mad. 277

24.—*Evidence proving title by inheritance to raj estates—Estate held as separate under the Hindu law—Widow's interest therein—Act XI of 1857 (Offences against the State)—Confiscation of property.*] A raj estate was claimed by the appellant as the nearest agnatic kinsman of the last Raja in possession, who had died without male issue, but leaving a widow and a daughter by her, both of whom died before this suit. The respondent, who had obtained possession, under a gift from the widow, denied the claimant's relationship to the Raja. He also alleged that no title could have descended to the claimant from father to son, as the father's property had been confiscated on his conviction of an offence against the State, and sentence under Act XI of 1857:—*Held*, that as the widow had taken the estate as the result of her husband's having owned it as his separate property, the respondent, whose only title was through her, had not established that a right of survivorship had accrued to the plaintiff's father on the death of the Raja in 1853; therefore, there was no right of that kind which could have been confiscated by the sentence which was passed in 1862. Nor had the father any right of inheritance that could be enforced during the life of the widow, who outlived him. The separation of the estate, as held by the late Raja, negatived both the confiscation and limitation. The claimant, to prove his title, relied upon a pedigree, not stated in any document produced that had existed in the family before this suit. The genealogy on which he claimed was, however, identical with one which his father had more than once asserted, alleging title to two *mouzahs* of the raj estate. The Raja called upon to answer in proceedings at settlement, had not given a direct denial to the alleged relationship. On the contention that there were steps in the pedigree as to which the evidence adduced did not include proof of statements made by a deceased person who had means of knowledge or proofs of other statements within s. 32 of the Indian Evidence Act (I of 1872), and as to which the evidence was insufficient:—*Held*, that the evidence taken altogether, oral and documen-

HINDU LAW—INHERITANCE—*contd.*

(5) IMPARTIBLE PROPERTY—*concluded.*

tary, had been sufficient to prove that the appellant was related to the deceased Raja, as he had claimed to be, and that the appellant was, as heir to him, entitled to inherit the raj estates on the widow's death; this opinion being founded on the documentary evidence. BEJAI BAHADUR SINGH *v.* BHUPINDAR BAHADUR SINGH; BEJAI BAHADUR SINGH *v.* KOUNSAL KISHORE PRASAD.

[17 All. 456
[L. R. 22 I. A. 139

25.—*Succession to impartible zemindari—Survivorship.*] Heritage to an impartible zemindari is to be traced according to the ordinary rules of the Hindu law of inheritance, unless some further family custom exists, beyond the custom of impartibility, although the estate will be in the possession of only one heir at a time. It was contended for the appellant that, in tracing the right heir to the proper stock entitled to the inheritance, a rule was applicable to an impartible estate, different from that applied to a partible one; and that, when once the heritage to an impartible estate had become obstructed, on the death of each successive owner, the true successor was the heir of the last owner of the originally unobstructed estate, though this did not apply to a partible estate. But for such a distinction no authority was cited, nor any principle suggested; and it was not upheld. The parties to this suit, first cousins once removed, contested the right to inherit an impartible zemindari, which had been acquired by their common ancestor, who had left two daughters by two different wives. The plaintiff was the son of the younger daughter; the defendant's father was the son of the elder. The younger half-sister survived the elder, and in 1863 was judicially declared to have inherited alone the impartible zemindari. On her death, the elder daughter's son, in litigation ending in 1881, made good his title to the impartible zemindari, being the descendant in the elder line:—*Held*, that this son of the elder daughter became, as the last male owner, the stock from which descent had now to be traced, and that the ancestor was no longer that stock. And *held*, that the son of this last male owner had a title to the zemindari on his father's death in consequence of the full and complete ownership of the latter, who had himself become a fresh root of title. This decision disposed of the only question that was argued on this appeal. But the decision of the Courts below that the plaintiff could not claim the inheritance in virtue of survivorship was also affirmed. The judgment below, on this part of the case, was based on this, that no family co-parcenary had existed to give rise to survivorship, as the sons of daughters could not form a family co-parcenary, which could only consist of the descendants of a paternal ancestor. MUTTUVADUGANADHA TEVAR *v.* PERIASAMI TEVAR.

[19 Mad. 451
[L. R. 23 I. A. 128

HINDU LAW—INHERITANCE—*contd.*

(6) JOINT PROPERTY AND SURVIVORSHIP.

26.—*Obstructed heritage—Succession per capita—Succession on extinction of a divided branch of family.*] On the death, without issue, of a Hindu who was divided from the rest of his family, his property passed in succession to his widow and mother. On the death of the latter, the nearest surviving reversioners were the plaintiff's husband and the first defendant's father, both since deceased, and their first cousin. The plaintiff now claimed a one-third share of the property abovementioned as the heiress of her husband who left no issue. It appeared that the plaintiff's husband and his co-reversioners were divided:—*Held*, that the plaintiff was entitled to recover. *Semble:* That she would have been entitled to recover even if her husband had not been divided from his co-reversioners. SAMINADHA PILLAI *v.* THANGATHANNI.

[19 Mad. 70

27.—*Obstructed inheritance—Inheritance passing to daughter's son—Presumption of joint property.*] The daughter's sons of a deceased Hindu take the property of their maternal grandfather as an inheritance liable to obstruction, and consequently take it without rights of survivorship *inter se*. Where property enjoyed in common by persons capable of forming a joint Hindu family was in its origin separate property, there is no presumption that such property has subsequently become joint property. *Muttayan Chetti* v. *Sivagiri Zamindar*, I. L. R. 3 Mad. 370; and *Sivaganga Zamindar* v. *Lakshmana*, I. L. R. 9 Mad. 188, doubted. CHELIKANI VENKATARAMANAYAMMA GARU *v.* APPA RAU BAHADUR GARU.

[20 Mad. 207

(7) DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

(*a*) GENERAL CASES.

28.—*Sapratibandha property.*] *Sapratibandha* (liable to obstruction) property vests in the heirs in existence at the time the inheritance opens, and is not subject to variation by the subsequent birth of any co-heir. NARASIMHA RAZU *v.* VEERABHADRA RAZU.

[17 Mad. 287

(*b*) INSANITY.

29.—*Insanity subsequent to inheriting of property—Committee in lunacy under Act XXXV of 1858—Mortgage of joint family property by Mitakshara law.*] Under the Mitakshara law, a person who has succeeded to the inheritance of property does not lose his right on his becoming insane at a subsequent time. *Ram Sahye Bhukkut* v. *Lalla Laljee Sahyee* I. L. R. 8 Calc. 149; and *Ram Soonder Rai* v. *Ram Sahye Bhagat*, I. L. R. 8 Cal. 919, distinguished. *Balgobinda* v. *Lal Bahadur*, S. D. A. 1854, p. 244; *Deokishen* v. *Budhprakash*, I. L. R. 5 All. 509; *Banku* v. *Pattamma*, I. L. R. 14 Mad. 289; and *Moniram Kolita* v. *Kery Kolitani*, I. L. R. 5 Calc. 776; L. R. 7 I. A. 115, referred to. The father and head of a joint family under the Mitakshara law

HINDU LAW—INHERITANCE—*concld.*

(7) DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—*concld.*

(*b*) INSANITY—*concluded.*

having become insane, two of his grandsons, acting as committee appointed under Act XXXV of 1858, mortgaged the joint family property on behalf of the lunatic, with the sanction of the Judge. The mortgagee sued upon the mortgage, and obtained a decree against them both in their own capacity and as guardians of their grandfather:—*Held*, that the act of the committee might well be regarded as the act of the father and head of the family, and the debt having been contracted for the benefit of the family, the whole family was bound by the mortgage and decree, and that the sale in execution thereof passed the entire property. ABILAKH BHAGAT *v.* BHEKHI MAHTO.

[22 Calc. 864

(*c*) LEPROSY.

30.—*Disease of a mild and not virulent form.*] Leprosy of a mild type was held not to affect the co-parcenary rights of a member of a Hindu family. It is only where the disease is of a virulent type that it effects a disqualification to inheritance. RANGAYYA CHETTI *v.* THANIKACHALLA MUDALI

[19 Mad. 74

(*d*) MARRIAGE.

31.—*Hindu widow, Custom of remarriage of—Forfeiture of estate.*] A Hindu widow, on remarriage, forfeits the estate inherited from her former husband, although, according to custom prevailing in her caste, a remarriage is permissible. *Murugayi* v. *Viramakali*, I. L. R. 1 Mad. 226, followed; *Matungini Gupta* v. *Ram Rutton Roy*, I. L. R. 19 Calc. 289, referred to; *Har Saran Dass* v. *Nandi*, I. L. R. 11 All. 330, dissented from. RASUL JEHAN BEGUM *v.* RAM SURUN SINGH.

[22 Calc. 589

(*e*) UNCHASTITY.

32.—*Daughter—Bengal School of Hindu law.*] According to the Bengal School of Hindu law, a daughter who is unchaste is precluded from inheriting the property of her father. RAMANANDA *alias* HARIS CHANDRA CHOWDHRY *v.* RAIKISHORI BARMANI.

[22 Calc. 347

HINDU LAW—JOINT FAMILY.

		Col.
1.	Presumption and Onus of Proof as to Joint Family	... 497
2.	Nature of, and Interest in, Property	498
3.	Debts and Joint Family Business	... 500
4.	Position and Power of Manager	... 500
5.	Powers of Alienation by Members	... 501
	(*a*) Manager	... 501
	(*b*) Other Members	... 503
6.	Sale of Joint Family Property in Execution of Decree and Rights of Purchasers	... 504

HINDU LAW—JOINT FAMILY—*contd.*

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[23 Calc. 912

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[20 Bom. 385

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[20 Bom. 467

See DECREE—FORM OF DECREE—POSSESSION.

[20 Bom. 467

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

[16 All. 449
[20 Bom 385

See GUARDIAN—APPOINTMENT.

[19 Bom. 309
[17 All. 529

See HINDU LAW—DEBTS.

[19 All. 26

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

[22 Calc. 864

See HUNDI

[20 Bom. 488

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[19 Bom. 269

See INSOLVENT ACT, S. 7.

[19 Mad. 74

See LUNATIC.

[20 Bom. 659

See MESNE PROFITS—RIGHT TO, AND LIABILITY FOR, MESNE PROFITS.

[19 Bom. 532

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

[18 Bom. 141
[20 Bom. 435

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[17 All. 537

See RES JUDICATA—CAUSE OF ACTION.

[23 Calc. 302

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

HINDU LAW—JOINT FAMILY—*contd.*

(1) PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

1.—*Loan contracted by manager of joint family—Presumption—Onus probandi.*] There is no presumption that a loan contracted by the manager of a joint Hindu family has been contracted for a family purpose. SOIRU PADMANABH RANGAPPA *v.* NARAYANRAO BIN VITHALRAO.

[18 Bom. 520

2.—*Suit for possession of property alleged to have been joint family property—Separation—Burden of proof.*] Three brothers, *M*, *P* and *H*, once constituted a joint Hindu family. After the death of all of them, the descendants of *M* sued the descendants of *H*, in effect to obtain their share of the property which had been of *P* in his lifetime. In their plaint they alleged that the family was still joint. By their evidence, however, they set up a separation between themselves and *H* shortly after the death of *P*. The defendants, on the other hand, alleged that some twenty or twenty-five years before suit, after the death of *M*, there had been a separation between the plaintiffs on the one side and *P* and *H* on the other:—*Held*, that, the plaintiffs having set up a case which was inconsistent with the presumption of the family remaining joint, it was for them to prove that the separation took place as they alleged. *Obhoy Churn Ghose* v. *Gobind Chunder Dey*, I. L. R. 3 Calc. 237, referred to. RAM GHULAM SINGH *v.* RAM BEHARI SINGH.

[18 All. 90

3.—*Property originally separate enjoyed in common.*] Where property enjoyed in common by persons capable of forming a joint Hindu family was in its origin separate property, there is no presumption that such property has subsequently become joint property. *Muttayan Chetti* v. *Sivagiri Zamindar*, I. L. R. 3 Mad. 370; and *Sivaganga Zamindar* v. *Lakshmana*, I. L. R. 9 Mad. 188, doubted. CHELIKANI VENKATARAMANAYAMMA GARU *v.* APPA RAU BAHADUR GARU.

[20 Mad. 207

4.—*Evidence as to the continuance of the joint holding of property—Inheritance and survivorship under the Mitakshara law.*] A daughter in the absence of sons claimed to inherit, after the deaths of her father's widows, estate which she alleged to have belonged to him separately. This estate had been at one time in his possession jointly with his only brother, they having been members of a joint family under the Mitakshara law. On the death of one of the brothers, who died before the claimant's father leaving sons, the latter became entitled thereto jointly with the survivor. In order to establish this claim to inherit her father's share on his subsequent death, it was *held* that it was for her to adduce evidence that there had been a separation between her father and his co-sharer, or co-sharers. As the evidence stood, the inference was that the previous joint holding had continued till her father's death. PRIT KOER *v.* MAHADEO PERSHAD SINGH.

[22 Calc. 85
[L. R. 21 I. A. 134

HINDU LAW—JOINT FAMILY—*contd.*

(1) PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*concluded.*

5.—*Presumption as to nature of property where the family is joint.*] Where a plaintiff's family is admitted or proved to be a joint Hindu family, but there is no direct evidence as to the nature of the debt claimed by the plaintiff, the presumption is that it is a family debt. JAGMOHANDAS KILABHAI *v.* ALLU MARIA LUSKAL.

[19 Bom. 338

6.—*Presumption as to nature of debt where the family is joint.*] Where a debt advanced from the funds of a joint Hindu family and due to that family is a bond-debt, it is not necessary that it should appear in the bond that the funds were those of a joint family. *Jagmohandas Kilabhai* v. *Allu Maria Duskal*, I. L. R. 19 Bom. 338, followed. PATESHURI PARTAP NARAIN SINGH *v.* BHAGWATI PRASAD.

[17 All. 578

7.—*Evidence of separation—Shares separately recorded in village papers—Separate purchases by individual members of family out of joint family funds.*] Where there has existed a joint Hindu family possessed as such of immoveable property, the presumption is that until the contrary is shown such family will continue to be joint. The fact that in the revenue and village papers individual members of a Hindu family, once admittedly joint, are recorded as holding each a certain specified portion of property, is not, standing by itself, sufficient evidence that a separation has taken place, nor is the fact that specific purchases of immoveable property have been made from time to time in the names of individual members of the family, and that the property as purchased was recorded in each case in the name of the nominal assignee. GAJENDAR SINGH *v.* SARDAR SINGH.

[18 All. 176

(2) NATURE OF, AND INTEREST IN, PROPERTY.

8.—*Ancestral property—Self-acquired property made ancestral by agreement—Effect of such agreement on accumulations and accretions of the property—Election—Estoppel—Interest of minor members of family in property made ancestral by agreement.*] *M* and his three sons *T*, *P* and *J*, lived together as an undivided Hindu family. In 1881 the youngest son, *J*, filed a suit for partition against his father and his two brothers. Being apprehensive that his other sons (the plaintiffs) might make a similar claim, *M*, on the 28th June, 1881, entered into an agreement with them (the plaintiffs) which recited (*inter alia*) that he, *M*, alleged that the only ancestral immoveable property belonging to him was the property specified in Part I of the schedule annexed to the agreement, but that the plaintiffs (his sons) alleged that the immoveable property specified in Part II of that schedule was also ancestral property, and provided (*inter alia*) that, in consideration of the terms and conditions therein set forth, his sons (the plaintiffs) would not "claim a partition of

HINDU LAW—JOINT FAMILY—*contd.*

(2) NATURE OF, AND INTEREST IN, PROPERTY—*continued.*

the said property" during the lifetime of the said *M*. The terms of this agreement were duly observed by the plaintiffs during their father's lifetime, and they continued to reside with him until his death. In the interval, however, *viz.*, in 1886, the partition suit brought by *J* was decided, and by the decree it was declared that the immoveable property specified in Sch. I of the aforesaid agreement was not ancestral property, but was the self-acquired property of *M*. On the 9th March, 1890, *M* died, leaving a will, dated 27th January, 1888. By this will he directed that his executors and trustees should take possession of all his property, both ancestral and self-acquired, and, after referring to the agreement of the 28th June, 1881, and the property in Part I of the schedule thereto, continued: "Whereas it has been decided by the Court of first instance, and such decision has been confirmed by the Appellate Court, that such property (*i.e.*, the property in Part I) is not ancestral property, yet I am unwilling to disturb the said deed as between my said two sons, and I, therefore, hereby confirm the same." Then, after making some other provisions, he devised and bequeathed to his trustees "all the residue of my self-acquired property," and he directed that such residue when ascertained and realised should be handed over to the Chancellor and Senate of the Bombay University to be devoted to the founding of scholarships. As directed by the will, the executors took possession of all the testatator's property, including the property in Part I of the said schedule. This last named property was subsequently, *viz.*, in December, 1890, conveyed by the executors to the plaintiffs. The plaintiffs now sued the executors, contending that the properties in Part I of the schedule to the agreement being ancestral under the agreement and will, they (the plaintiffs) were entitled not only to them, but to all the accumulations and accretions thereof, which amounted in value to about ten lakhs of rupees. The University, on the other hand, contended that the accumulations and accretions formed part of the self-acquired property of the testator, and went to the University under the residuary clause of the will:—*Held* (TYABJI, J.) (1) that the effect of the agreement was to make the property specified in Part I of the schedule thereto ancestral property as between the parties to the agreement. (2) That the agreement was confirmed by the will, and was binding on the executors. (3) That, although the *corpus* of the said property became ancestral under the agreement, the accumulations and accretions thereof did not: they were the self-acquired property of the testator, and passed to the trustees under the residuary clause of the will. The plaintiffs had subsequently to the death of *M* taken possession of the properties in question, and had paid probate duty on them. The plaintiffs had taken conveyances from the executors and had given releases to the executors, and in a previous suit (No. 670 of 1892) the first plaintiff had in his evidence stated that

HINDU LAW—JOINT FAMILY—*contd.*

(2) NATURE OF, AND INTEREST IN, PROPERTY—*concluded.*

he did not wish to dispute the will, and that he had elected to take under it:—*Held*, that by their conduct the plaintiffs had elected to take the properties in question under the will, and could not maintain a suit for an account of the rents and profits either under or in opposition to the will:—*Held*, also, that the sons of the plaintiffs (the minor defendants) were bound by the acts of the plaintiffs. The property in question was not really ancestral. It was only such for the purpose and by virtue of the agreement of 28th July, 1881, and the plaintiffs were entitled to waive it or rescind it if they pleased, and their sons could not prevent them from doing so. TRIBHOVANDAS MANGALDAS *v.* YORKE-SMITH.

[20 Bom. 316

Held, on appeal (FARRAN, C. J., and STRACHEY, J.) reversing the above decree, that all accumulations and accretions to the properties in question subsequent to the agreement of 28th June, 1881, were ancestral property, and passed as such to the sons of *M* at his death. TRIBHOVANDAS MANGALDAS *v.* YORKE-SMITH.

[21 Bom. 349

(3) DEBTS AND JOINT FAMILY BUSINESS.

9.—*Ancestral trade carried for benefit of minor by the minor's natural guardian—Minor bound by acts of the guardian—Liability of minor for debts.*] Under Hindu law where an ancestral trade descends upon a minor as the sole member of the family, and the ancestral trade is carried on under the superintendence of the minor's natural guardian, for the benefit of herself (she having a claim for maintenance) and the said minor, the minor will be bound by all acts of the guardian necessarily incidental to or flowing out of the carrying on of the trade. RAMPARTAB SAMRATHRAI *v.* FOOLIBAI.

[20 Bom. 767

(4) POSITION AND POWER OF MANAGER.

10.—*Power of father as manager of joint family to refer to arbitration the partition of the joint family property—Effect of award.*] It is competent to the father of a joint Hindu family in his capacity of managing member of the family to refer to arbitration the partition of the joint family property, and the award made on such a reference, if in other respects valid, will be binding on the sons. JAGAN NATH *v.* MANNU LAL.

[16 All. 231

11.—*Remuneration for management.*] In a suit for partition of family property, one of the defendants claimed to be credited with a sum payable to him as the managing co-parcener under a deed of management to which the plaintiff was not party:—*Held*, that the claim under the deed of management was not valid against the plaintiff. In the absence of a valid special agreement, the managing co-parcener of a joint Hindu

HINDU LAW—JOINT FAMILY—*contd.*

(4) POSITION AND POWER OF MANAGER—*concluded.*

family is clearly not entitled to remuneration, he being a joint owner of the property which he manages. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR.

[18 Mad. 73

12.—*Power of manager to revive a time-barred debt—Limitation Act (XV of 1877), s. 19.*] The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself. DINKAR *v.* APPAJI.

[20 Bom. 155

(5) POWERS OF ALIENATION BY MEMBERS.

(*a*) MANAGER.

13.—*Gift by manager of part of family property—Illegitimate daughters—Maintenance, Right to.*] *R*, the manager of an undivided Hindu family, gave certain shares in a spinning and weaving company, which had been purchased out of family funds, to *G* for and on behalf of the plaintiffs, who were *R's* illegitimate daughters. After the death of *R* and *G*, *R's* illegitimate daughters sued the surviving members of the family for a declaration that the shares belonged to them, and that they had a right to have them transferred to their names in the company's books:—*Held*, without deciding whether illegitimate daughters were entitled to simple maintenance from the family property that, in any case, *R*, as manager, could not alienate the shares for that purpose, as there were no emergent circumstances requiring it. PARVATI *v.* GANPATRAO BALAL.

[18 Bom. 177

14.—*Sale by widow, as manager of the joint family, of immoveable property left by husband—Family necessity—Effect of sale as against minor sons—Deed of sale—Intention of parties.*] A Hindu died in debt leaving two minor sons. His widow, who after his death was the manager of the family, borrowed money for family purposes, and as security mortgaged some of the immoveable property left by her husband. She subsequently sold it, and the Court held that the evidence showed that it was sold to pay off the family debts:—*Held*, that the minor sons were bound by the sale:—*Held*, also, that the effect of a conveyance of property sold by the manager of a family depends on the intention of the parties as gathered from the terms of the instrument and from the surrounding circumstances. SUCCARAM MORARJI SHETAY *v.* KALIDAS KALIANJI.

[18 Bom. 631

15.—*Gift of undivided share by adults of family—Minor co-sharer not a party to gift.*] According to Hindu law, under ordinary circumstances, a gift by a co-parcener of his undivided share in immoveable property is invalid, and a minor's share cannot be given away by a manager except in case of necessity or for certain specified purposes. Certain land which was joint family

HINDU LAW—JOINT FAMILY—*contd.*

(5) POWERS OF ALIENATION BY MEMBERS—*continued.*

(*a*) MANAGER—*concluded.*

property was given by the adult members of the family to the plaintiff as the worshipper of a deity. A minor co-parcener did not join in the gift. The plaintiff sued the occupier for possession:—*Held*, that the plaintiff could not recover. The gift, not being made from necessity, nor for the performance of any pious duties obligatory on the minor or the family, was invalid, and could not be given effect to even with respect to the shares of the donors. KALU *v.* BARSU.

[19 Bom. 803

16.—*Manager of lunatic appointed under Act XXXV of 1858—Mortgage of interest of minors.*] Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in accordance with the provisions of that Act, although he may also be *de facto* manager of the family property. A Hindu married woman having a lunatic husband and minor sons was appointed guardian of the lunatic's estate under Act XXXV of 1858. She was also *de facto* manager of the family. She mortgaged the family property without the sanction of the Court, as required by s. 14 of the Act:—*Held*, that the mortgages were invalid as regards the lunatic's interest in the property, but as regards the interest of the minors, which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes. ANPURNABAI *v.* DARGAPA MAHALAPA NAIK.

[20 Bom. 150

17.—*Debts contracted by manager for family purposes—Evidence required where there has been a series of transactions—Onus of proof and presumption as to loans being for family purposes.*] Although there is no presumption that moneys borrowed by the manager of a Hindu family are borrowed for family purposes, and a plaintiff seeking to make the family property liable must prove that the loans were contracted for the family, it is not incumbent on the plaintiff to show, in respect of each item in a long series of borrowings, the particular purpose for which it was borrowed. It will be sufficient for him to show that the family was in chronic need of money for the current outgoings of the family life or its trade necessities, and that the moneys were advanced on the representation of the manager that they were needed for such objects. And if the fair inference to be drawn from all the circumstances of the cases leaves no doubt that the moneys were borrowed for family reasons, the plaintiff is entitled to succeed although he is not able to indicate the particular purpose for which such sum has been borrowed. KRISHNA RAMAYA NAIK *v.* VASUDEV VENKATESH PAI; VASUDEV VENKATESH PAI *v.* MHASTI.

[21 Bom. 808

HINDU LAW—JOINT FAMILY—*contd.*

(5) POWERS OF ALIENATION BY MEMBERS —*concluded.*

(*b*) OTHER MEMBERS.

18.—*Transfer by one member of his share in the joint family property to another member—Consent of co-sharers.*] One member of a joint Hindu family cannot transfer his undivided share in the joint family property to another member of the family without the consent of the rest of the co-sharers. CHANDAR KISHORE *v.* DAMPAT KISHORE.

[16 All. 369

19.—*Alienation of his share by a co-parcener—His position and rights after such alienation—Position and rights of purchaser—Subsequent death or birth of other co-parceners—Effect on position of purchaser and on right of survivorship.*] (1) The alienation by a Hindu co-parcener of his rights in part or the whole of the joint family property does not place the purchaser of such rights in his own position. The purchaser becomes a sort of tenant in common with the co-parceners, admissible, as such, to his distributive share upon a partition taking place. (2) Such an alienation before partition does not deprive the alienating co-parcener of his rights in the joint family. (3) As the purchaser does not by the death of the vendor lose his right to a partition, so his position is not improved by the death of the other co-parceners before partition. (4) The purchaser, like his alienor, is liable to have his share diminished upon partition by the birth of other co-parceners if he stands by and does not insist on an immediate partition. Three undivided brothers, viz., *S*, *N*, and *M*, were the owners of a certain house which, on the 1st August, 1845, *N* mortgaged with possession to one *A*. In 1878, the house was vested in the respective sons of the said three brothers, *viz.*, *B* (son of *S*), *R* (son of *N*), and *K* (son of *M*). In September, 1878, in execution of a decree against *B* alone, the house was sold *eo nomine* (not merely *B's* interest) to one *G*. Formal possession was given to the purchaser, but the actual possession remained with the mortgagee (*A*). After this sale took place no other family property remained in which *B* had an interest. *K* died in 1880, and *R* died in 1883, no partition having been made between them and *B*. In March, 1891, *B* sold his interest in the house to the plaintiff, who in 1892 filed this suit to redeem the mortgage of 1845. The lower Appellate Court dismissed the suit, holding that when in 1878 *G* purchased *B's* right and interest in the last remaining portion of the family property, *B* ceased to be a co-parcener with *K* and *R*, and consequently took nothing by survivorship on their death, their shares going to *G*. On appeal to the High Court:—*Held*, that *B's* rights to succeed to his brothers' shares were not affected by the sale of his interest in the last item of joint family property to *G* so long as the latter did not proceed to work out his rights by partition. *B* became entitled, on the death of *K* and *R*, to their respective shares. GURLINGAPA SATWIRAPA GIDWIR *v.* NANDAPA CHANBASAPA SOLAPURI.

[21 Bom. 797

HINDU LAW—JOINT FAMILY—*contd.*

(6) SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS.

20.—*Family debt—Liability of family property—Decree against manager—Sale in execution of decree—Rights of auction-purchaser.*] Where the manager of a joint Hindu family is sued for the recovery of a debt, and his right, title and interest in the family property are sold in execution, the questions which the Court has to decide in determining the *quantum* of interest which has passed to the auction-purchaser are (1) whether the debt was one for which the entirety might, by proper procedure, have been brought to sale; and (2) whether, as a matter of fact, the purchaser bargained and paid for the entirety. *A* and his three younger brothers *B*, *C*, and *D*, were members of a joint Hindu family. *A* was the manager of the family. After *A's* death, *B*, *C* and *D* were sued as his legal representatives in respect of a debt which *A* had contracted for the benefit of the family. A decree was passed against them as *A's* representatives, directing the recovery of the debt by sale of *A's* estate. In execution of this decree, *A's* right, title and interest in certain family property was put up to sale:—*Held*, that the sale affected the rights of all the members of the joint family. Under the circumstance, what was meant to be brought to sale was the right, title and interest of the family of which *A* had been the manager, and for the benefit of which the debt had been incurred. JANKIBAI *v.* MAHADEV.

[18 Bom. 147

21.—*Mortgage for debt due by father of joint family—Sale in execution of decree—Effect of sale on members of family not made parties.*] When in a mortgage suit the debt is due from the father, and after his death the property is brought to sale in execution of a decree against the widow or some of the heirs of the mortgagor, and the whole property is sold, then the heirs not brought on the record cannot be permitted to raise the objection that they are not bound by the sale simply because they are not parties on the record. This principle of law applies as much to a Hindu family governed by the Mitakshara law as to a Mahomedan family. *Hari* v. *Jairam*, I. L. R. 14 Bom. 597; and *Khurshetbibi* v. *Keso*, I. L. R. 12 Bom. 101, referred to and followed. DAVALAVA *v.* BHIMAJI DHONDO.

[20 Bom. 338

22.—*Money decree against father—Execution against son after the death of the father—Ancestral property in the hands of the son—Civil Procedure Code* (1882), *s.* 234.] A money decree obtained against the father of an undivided Hindu family can be executed after his death against his sons to the extent of the ancestral property that has come into their hands, even if the debt has been incurred for the sole purposes of the father, provided that it is not tainted with immorality or illegality. UMED HATHISING *v.* GOMAN BHAIJI.

[20 Bom. 385

HINDU LAW—JOINT FAMILY—*contd.*

(6) SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*continued.*

23.—*Mitakshara law—Sale of joint property in execution of decree against father—Decree for damages for theft or misappropriation—Antecedent debt—Pious duty of sons to pay father's debt—Bonâ-fide purchaser, Equities of.*] In execution of a decree for damages for theft or misappropriation against *M* and *S*, two of the members of a joint Hindu family under the Mitakshara law, ancestral property of the family was sold, and the purchasers took possession. In a suit by the sons of *M* and *S* and several other members of the family for recovery of their interests in the property :—*Held*, that there was no "debt antecedent" to the decree in this case; that even if the right to obtain damages for the theft or misappropriation could be said to have created a "debt," the debt was tainted with illegality or immorality, the sons were not under a pious duty to pay the debt, and the interests of the sons did not pass by the sale :—*Held*, also, that the purchasers in this case were not entitled to the equities of a *bonâ fide* purchaser, as the decree, if examined, would have put them upon inquiry. PAREMAN DASS *v.* BHATTU MAHTON.

[24 Calc. 672

24.—*Family debt—Liability of family property in execution of—Decree against a manager—Parties, Non-joinder of.*] Where family property is sold in execution of a decree, obtained against a brother as manager of a joint Hindu family, for a family debt contracted by his father and himself and a brother, the interest of all the members of the family passes to the auction-purchaser though they have not been joined as parties to the suit or to the execution proceedings. BHANA *v.* CHINDHU.

[21 Bom. 616

25.—*Benares School of Law—Joint family property—Ancestral property assigned to wife in lieu of maintenance, Devolution of—Collateral succession—Decree passed by mistake against father, Effect of, on sons—Sale in execution of decree against father—Purchase by decree-holder—Interest passed by sale, Nature and extent of—Mother's share in joint family property, Nature and devolution of.*] A Hindu, governed by the Benares School of Law, died, leaving a joint family consisting of four sons, *A*, *B*, *C*, and *D*, and a widow, *R*, to whom he assigned an ancestral *monzah* in lieu of her maintenance. All the sons predeceased the widow, *C* and *D* dying childless. After the widow's death, a separation took place in 1862 among all her grandsons, viz., *E* and *F*, sons of *A*, and *G* and *H*, sons of *B*. At the separation, *E* withheld possession, among other properties, of the *monzah* assigned to *R* on alleged transfers from *R* and the widows of *C* and *D*; *H* sued *E*, making *G* a *pro formâ* defendant, and recovered a decree for 4 annas of the *monzah* in 1864, and *G* also recovered a similar decree for 4 annas in 1865. Some time after *H* brought an action for mesne profits and recovered a decree in 1875 against *M*, heir of *E*,

HINDU LAW—JOINT FAMILY—*contd.*

(6) SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*continued.*

and also against *G*, although there was no allegation of wrong against the latter, and no finding in the Court's judgment to that effect. In execution of this decree *H* caused the interest of *G* in the *mouzah* to be sold, purchased it himself, and took delivery of possession on the 19th December, 1878. In 1881, the wife of *G*, together with her two sons (plaintiffs 1 and 2), executed a *kabala* in respect of one anna six pies of the *mouzah* to *S* (defendant 4); the wife of *G* died in 1885. The present suit was brought by the three sons of *G* to recover a four-fifth of the four annas of the said *mouzah*; a three-fifth in their own right and a one-fifth in right of their mother. Among the objections raised by the defendants and pressed by them on appeal to the High Court, it was urged (1) that out of the four-anna share, two annas were acquired by *G* collaterally from his uncles *C* and *D*, and therefore were not "ancestral property" of the plaintiffs :—*Held*, that the *mouzah* in question retained the character of ancestral property during the lifetime of the widow *R*, and that, upon her death, it devolved upon her grandsons *E*, *F*, *G* and *H* as *ancestral* property and not as property derived by collateral succession from either *C* or *D*. (2) It was also urged that the decree of 1875 was conclusive as to the liability of *G*, and the plaintiffs could not raise any question on the existence of a debt binding on them :—*Held*, that the plaintiffs were not precluded from showing that there was no real debt, and that the sale held in execution did not pass the entire interest of the family of the plaintiffs. *Suraj Bunsi Koer* v. *Sheo Proshad Singh*, I. L. R. 5 Calc. 148; L. R. 6 I. A. 88; *Luchmon Dass* v. *Giridhur Chowdhry*, I. L. R. 5 Calc. 855; *Nanomi Babuasin* v. *Modun Mohun*, I. L. R. 13 Calc. 21; L. R. 13 I. A. 1; *Deendyal Lal* v. *Jugdeep Narain Singh*, I. L. R. 3 Calc. 198; L. R. 4 I. A. 247; *Hurdey Narain Sahu* v. *Rooderperkash Misser*, I. L. R. 10 Calc. 626; L. R. 11 I. A. 26; and *Simbhunath Panday* v. *Golab Sing*, I. L. R. 14 Calc. 572; L. R. 14 I. A. 77, referred to. (3) It was further urged that the claim being for a four-fifth share, the present suit should be treated as one for partition, and shares distributed according to the state of the family on the date of the suit, and in that case plaintiffs' claim to the share of their mother would not stand :—*Held*, that this contention could not be sustained, and the defendants could claim only that share which, if a partition had taken place on or before the date of sale, would be allotted to the father, *i.e.*, a one-fifth share. *Deendyal Lal* v. *Jugdeep Narain Singh*, I. L. R. 3 Calc. 198; L. R. 4 I. A. 247; *Hurdey Narain Sahu* v. *Rooderperkash Misser*, I. L. R. 10 Calc. 626; L. R. 11 I. A. 26; and *Suraj Bunsi Koer* v. *Sheoproshad Singh*, I. L. R. 5 Calc. 148; L. R. 6 I. A. 88, referred to. (4) As to the *kabala* executed by the plaintiffs 1 and 2 and their mother in 1881, it was contended that six pies out of a one anna six pies share, the proportionate share of the mother, passed absolutely to the purchaser, and plaintiffs could not recover that portion of the share :—

HINDU LAW—JOINT FAMILY—*concld.*

(6) SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*concluded.*

Held, that the mother was entitled to a one-fifth share in *lieu of maintenance* only, and had no absolute power of disposal in respect of that share. *Judoonath Tewaree* v. *Bishonath Tewaree*, 9 W. R. 61; and *Lalljeet Singh* v. *Rajcoomar Singh* 12 B. L. R. 37'; 20 W. R. 336, referred to. BENI PARSHAD *v.* PURAN CHAND.

[23 Calc. 262

HINDU LAW—MAINTENANCE.

Col.

1. Form of Allowance and Calculation of Amount ... 507
2. Arrears of Maintenance ... 508
3. Right to Maintenance ... 508
   (*a*) General Cases ... 508
   (*b*) Illegitimate Children ... 509
   (*c*) Widow ... 509
   (*d*) Wife ... 510

See DECREE—FORM OF DECREE—MAINTENANCE.

[18 Bom. 452, 679

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—MANAGER.

[18 Bom. 177

(1) FORM OF ALLOWANCE AND CALCULATION OF AMOUNT.

1.—*Assignment of mortgaged property as maintenance of a widow—Subsequent redemption of the mortgage—Widow's right to the redemption money—Form of decree.*] A field held in mortgage by the family of the parties was assigned to a widow in the family for her maintenance when the family divided. The mortgage money was subsequently paid into Court in pursuance of a decree for redemption :—*Held*, that it was clear on the assignment that the widow was entitled to the money just as she was entitled to the field, *i.e.*, to the usufruct of it for her life. GAMBHIRMAL *v.* HAMIRMAL.

[21 Bom. 747

2.—*Maintenance of widow by her husband's brothers and nephew—Death of the plaintiff's husband prior to his father's death.*] In a joint Hindu family, governed by the Mitakshara law, the property of *S*, the father, consisted, at any rate partly, of ancestral property. He died, leaving three sons and one grandson (son of a predeceased son). *A*, another son of *S*, died childless before his father, leaving his widow, the plaintiff. In a suit by her against the brothers and the nephew of her husband for maintenance, in which she claimed Rs. 100 a month :—*Held*, that in determining the amount of maintenance, the Court should take into consideration not only the reasonable wants of a person in her position of life, but also the means of the family of her husband. *Nittokissoree Dassee* v. *Jogendro Nath Mullick*, L. R. 5 I. A. 55; *Baisni* v. *Rup Singh*, I. L. R. 12 All. 558, referred to. DEVI PERSAD *v.* GUNWANTI KOER.

[22 Calc. 410

HINDU LAW—MAINTENANCE—*contd.*

(2) ARREARS OF MAINTENANCE.

3.—*Suit for arrears of maintenance—Proof of wrongful withholding of maintenance.*] In a suit for arrears of maintenance it is incumbent on the plaintiff to prove that there has been a *wrongful* withholding of the maintenance to which he is entitled. *Jivi* v. *Ramji*, I. L. R. 3 Bom. 207; and *Mahalakshmamma* v. *Venkataratnamma*, I.L.R. 6 Mad. 83. followed. MALLIKARJUNA PRASADA NAIDU *v.* DURGA PRASADA NAIDU.

[17 Mad. 362

4.—*Suit to recover arrears of maintenance due under a personal decree and to establish a charge for future maintenance on the family property.*] A Hindu widow obtained a personal decree against her father-in-law for maintenance. Her late husband's five brothers were made parties to the suit, but no personal decree was made against them, nor did the widow ask that her maintenance be made a charge on the family property. On the death of her father-in-law, the family property devolved on his sons and grandsons, who sold certain of the property. There were arrears of maintenance due, and the widow instituted the present suit, in which she asked for a decree establishing her right to receive maintenance for her life and for the arrears of maintenance on the responsibility of the property :—*Held* (1) that the maintenance not having been declared a charge upon the portion of the property which had been alienated, this property was free from any charge for her maintenance ; (2) that the arrears of maintenance constituted a personal debt of the plaintiff's deceased father-in-law, and that his sons and grandson (the defendants) incurred his liability on his decease, and were bound to discharge the same out of the family property ; (3) that the right to maintenance being enforceable against the defendants, the right to have it made a charge on the family property was enforceable along with it. BHAGIRATHI *v.* ANANTHA CHARIA.

[17 Mad. 268

5.—*Suit by widow for maintenance—Previous demand—Right to arrears of maintenance.*] A Hindu widow brought a suit against her husband's brother to establish her right to maintenance, and to recover arrears for six years ; she had made no demand before suit :—*Held*, that she was not entitled to a decree for the arrears. SESHAMMA *v.* SUBBARAYADU.

[18 Mad. 403

(3) RIGHT TO MAINTENANCE.

(*a*) GENERAL CASES.

6.—*Junior members of raj family—Impartible property, Maintenance out of. Suit for—Limitation.*] The plaintiff was the second son of the defendant, who was the Thakor of Amod, a *talukdari* estate of the nature of an impartible raj or principality. The plaintiff's family belonged to the community of *Molesalam Girasias*. Plaintiff alleged that, according to a family usage, he, as a junior member of the family, was entitled to receive maintenance

HINDU LAW—MAINTENANCE—*contd.*

(3) RIGHT TO MAINTENANCE—*continued.*

(*a*) GENERAL CASES—*concluded.*

from his father, who was the holder of the *gadi*. The estate was under the management of the Talukdari Settlement Officer from 1878 to 1888, during which period that officer granted the plaintiff an allowance in lieu of maintenance without any objection on the defendant's part. On the 1st August, 1888, the estate was restored to the defendant, who stopped the allowance. The plaintiff thereupon sued in 1891 to recover from the defendant arrears of maintenance for two years and eleven months at Rs. 200 a month:—*Held*, that the plaintiff was entitled to recover, and that the claim was not time barred. FATESANGJI JASVATSANGJI *v.* KUVAR HARISANGJI FATESANGJI.

[20 Bom. 181

(*b*) ILLEGITIMATE CHILDREN.

7.—*Illegitimate son.*] Under the Mitakshara law an illegitimate son is entitled to maintenance as long as he lives, in recognition of his status as a member of his father's family and by reason of his exclusion from inheritance among the regenerate classes. The maintenance decreed to an illegitimate son may be secured on the family property. ANANTHAYA *v.* VISHNU.

[17 Mad. 160

8.—*Right to maintenance of illegimate member of the family—Right of redemption—Suit by legitimate son of illegitimate member of the family to redeem a mortgage made by a previous legitimate owner.*] The right of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right, and does not descend to his son:—*Held*, that the legitimate son of an illegitimate member of a Hindu family who has such illegitimate son, might have had a right to maintenance from the property of his father, had no such interest in the estate belonging to the family as would entitle him to redeem a mortgage made by a previous rightful and legitimate owner of the estate. BALWANT SINGH *v.* ROSHAN SINGH.

[18 All. 253

(*c*) WIDOW.

9.—*Forfeiture of widow's right to maintenance by reason of unchastity.*] The unchastity of a widow deprives her wholly of her right to maintenance, and the fact that there has been an agreement as to maintenance makes no difference. *Valu* v. *Ganga*, I. L. R. 7 Bom. 84; and *Vishnu Shambog* v. *Manjamma*, I. L. R. 9 Bom. 108, followed. NAGAMMA *v.* VIRABHADRA.

[17 Mad. 392

10.—*Right of a widow to receive maintenance from her husband's brothers and nephew—Death of the plaintiff's husband prior to his father's death.*] In a joint Hindu family, governed by the Mitakshara law, the property of *S*, the father, consisted, at any rate partly, of ancestral property. He died, leaving three sons and one grandson (son of a predeceased son). *A*, another son of *S*, died childless before his father, leaving his widow, the plaintiff. In a suit by her against the brothers and the nephew of her husband for maintenance, in which she claimed Rs. 100 a month:—*Held*, that as the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's lifetime, enforced partition of that property, and as the Hindu law provides that the surviving co-parceners should maintain the widow of a deceased co-parcener, the plaintiff was entitled to maintenance. *Khetramanai Dasi* v. *Kashinath Das*, 2 B. L. R. A. C. 15; 10 W. R. F. B. 89; *Lalljeet Singh* v. *Raj Coomar Singh*, 12 B. L. R. 373; 20 W. R. 337; *Suraj Bansi Koer* v. *Sheo Persad Singh*, I. L. R. 5 Calc. 148; *Janki* v. *Nand Ram*, I. L. R. 11 All. 194; *Kamini Dassie* v. *Chandra Pode Mondle*, I. L. R. 17 Calc. 373; and *Adhibai* v. *Cursandas Nathu*, I. L. R. 11 Bom. 199, referred to. DEVI PERSAD *v.* GUNWANTI KOER.

[22 Calc. 410

11.—*Right of maintenance out of property fraudulently alienated by husband without consideration—Right of suit.*] (*Quære: Per* COLLINS, C. J., and BENSON, J.) Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud. RANGAMMAL *v.* VENKATACHARI.

[20 Mad. 323

(*d*) WIFE.

12.—*Wife's right of maintenance among Sudras—Continued unchastity and misconduct.*] In 1887, a suit was instituted against a Sudra by his wife, and a decree was passed for her maintenance. The judgment-debtor now sued to have that decree set aside, alleging that his wife had since committed adultery and given birth to an illegitimate child. The wife denied the adultery and stated that her husband had become reconciled to her, and that her child was legitimate. It was found that the plaintiff's case was established, and that the defendant's misconduct had been recent, open, and continuous:—*Held*, that the decree in the previous suit should be set aside, and that the defendant was not entitled to a bare maintenance. *Quære:* Whether apart from the other circumstances in the case, the fact of having given birth to an illegitimate child would have constituted a bar to the wife's claim to bare maintenance. KANDASAMI PILLAI *v.* MURUGAMMAL.

[19 Mad. 6

HINDU LAW—MARRIAGE.

Col.

1. Betrothal ... 511
2. Validity or otherwise of Marriage ... 511

See DIVORCE ACT, S. 7.

[17 Mad. 235

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.

[18 All. 474

HINDU LAW—MAINTENANCE—*concld.*

(3) RIGHT TO MAINTENANCE—*concluded.*

(*c*) WIDOW—*concluded.*

deceased son). *A*, another son of *S*, died childless before his father, leaving his widow, the plaintiff. In a suit by her against the brothers and the nephew of her husband for maintenance, in which she claimed Rs. 100 a month:—*Held*, that as the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's lifetime, enforced partition of that property, and as the Hindu law provides that the surviving co-parceners should maintain the widow of a deceased co-parcener, the plaintiff was entitled to maintenance. *Khetramanai Dasi* v. *Kashinath Das*, 2 B. L. R. A. C. 15; 10 W. R. F. B. 89; *Lalljeet Singh* v. *Raj Coomar Singh*, 12 B. L. R. 373; 20 W. R. 337; *Suraj Bansi Koer* v. *Sheo Persad Singh*, I. L. R. 5 Calc. 148; *Janki* v. *Nand Ram*, I. L. R. 11 All. 194; *Kamini Dassie* v. *Chandra Pode Mondle*, I. L. R. 17 Calc. 373; and *Adhibai* v. *Cursandas Nathu*, I. L. R. 11 Bom. 199, referred to. DEVI PERSAD *v.* GUNWANTI KOER.

[22 Calc. 410

11.—*Right of maintenance out of property fraudulently alienated by husband without consideration—Right of suit.*] (*Quære: Per* COLLINS, C. J., and BENSON, J.) Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud. RANGAMMAL *v.* VENKATACHARI.

[20 Mad. 323

(*d*) WIFE.

12.—*Wife's right of maintenance among Sudras—Continued unchastity and misconduct.*] In 1887, a suit was instituted against a Sudra by his wife, and a decree was passed for her maintenance. The judgment-debtor now sued to have that decree set aside, alleging that his wife had since committed adultery and given birth to an illegitimate child. The wife denied the adultery and stated that her husband had become reconciled to her, and that her child was legitimate. It was found that the plaintiff's case was established, and that the defendant's misconduct had been recent, open, and continuous:—*Held*, that the decree in the previous suit should be set aside, and that the defendant was not entitled to a bare maintenance. *Quære:* Whether apart from the other circumstances in the case, the fact of having given birth to an illegitimate child would have constituted a bar to the wife's claim to bare maintenance. KANDASAMI PILLAI *v.* MURUGAMMAL.

[19 Mad. 6

HINDU LAW—MARRIAGE—*continued.*

(1) BETROTHAL.

1.—*Contract of marriage—Suit against father of betrothed girl to have betrothal declared void and for damages for breach of contract—Kapole Bania caste.*] The plaintiff, who had been betrothed to the defendant's daughter *K*, sued for a declaration that unless the defendant was willing that the marriage should be performed before the expiration of the month of Baisakh, 1952 (May-June, 1896), the contract for the marriage should no longer be binding on the plaintiff, and that the betrothal was void, and for Rs. 25,000 damages for breach of the contract of betrothal and marriage. The defendant pleaded that his daughter *K* was not willing to marry the plaintiff within the period mentioned, and that he had no right to force his daughter against her will. At the trial *K* stated that she was unwilling to be married for three or four years. The Court found that, in the Kapole Bania caste, to which the parties belonged, marriages ordinarily took place when the bride was between twelve and fifteen years of age. *K* was born on the 2nd May, 1881, so that she was nearly fifteen at the date of suit (16th January, 1896). Before filing the suit, the plaintiff had called upon her and the defendant (her father) to fix a date for the marriage, but the defendant had declined to do so on the ground that his daughter did not wish to marry at that time, and that he would not force here to marry against her will:—*Held*, that the plaintiff was entitled to the declaration prayed for. The marriage of Hindu children is a contract made by the parents, and the children themselves exercise no volition. This is equally true of betrothal, and there is no implied condition that fulfilment of the contract depends on the willingness of the girl at the time of marriage. It was contended that plaintiff could not obtain damages; that defendant had not broken the contract, the plaint assuming that the contract of betrothal was still in force, and the defendant having a *locus pœnitentiæ* until Baisakh, 1952:—*Held*, that the plaintiff was entitled to damages. There was practically a repudiation of the betrothal. The plaintiff's willingness to marry *K* at any time before the end of Baisakh did not disentitle him to damages, seeing that *K* had declared her unwillingness to be married to plaintiff then, and the defendant had declared that he could not compel her to change her mind. PURSHOTAMDAS TRIBHOVANDAS *v.* PURSHOTAMDAS MANGALDAS.

[21 Bom. 23

(2) VALIDITY OR OTHERWISE OF MARRIAGES.

2.—*Marriage with daughter of wife's sister.*] A marriage between a Hindu and the daughter of his wife's sister is valid. RAGAVENDRA RAU *v.* JAYARAM RAU.

[20 Mad. 283

3.—*Marriage without consent of the father of the girl.*] Under the Hindu law, if a girl is given in marriage by her mother and all the necessary rites are duly performed, and there is no question

HINDU LAW—MARRIAGE—*concluded.*

(2) VALIDITY OR OTHERWISE OF MARRIAGES—*concluded.*

of force or fraud and no other legal impediment to the marriage, the marriage will not be invalid merely because the consent of the girl's father has not been obtained. *Bace Rulyat* v. *Jey Chund Kewul*, 1 Morley's Dig. 181; and *Venkatacharyulu* v. *Rangacharyulu*, I. L. R. 14 Mad. 316, referred to. GHAZI *v.* SUKRU.

[19 All. 515

HINDU LAW—PARTITION.

		Col.
1.	Requisites for Partition	... 512
2.	Property liable to Partition	... 514
3.	Partition of Portion of Property	... 515
4.	Right to Partition	... 516
	(*a*) Generally	... 516
	(*b*) Minor	... 516
	(*c*) Purchaser from Co-parcener	... 517
	(*d*) Son	... 517

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[19 Mad. 211

See HINDU LAW—GUARDIAN — POWERS OF GUARDIANS.

[19 Bom. 593

See HINDU LAW—JOINT FAMILY—POSITION AND POWERS OF MANAGER.

[16 All. 231

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &C.

[23 Calc. 262

See LIMITATION ACT, ART. 127.

[18 Bom. 197
[18 Mad. 418

See LIMITATION ACT, ART. 141.

[20 Mad 459

(1) REQUISITES FOR PARTITION.

1.—*Partition effected without taking into account a minor co-parcener—Invalid partition.*] A partition effected without reserving any share for a minor member of the family, and without the consent of some one authorized to act on his behalf, is invalid as against the minor. Three brothers, *S*, *L* and *K*, were members of a joint Hindu family. In 1862, *S* and *L* divided the whole of the family property between them without reserving any share for their brother *K*, who was then a minor. *K* lived with *L* as a member of his family. *L* died in 1867, leaving a childless widow, with whom *K* continued to live till his death in 1876. *K* left an infant son (the plaintiff), only a year old. Subsequently *S* died in 1887, leaving two widows without issue. In 1889 the plaintiff, being still a minor, sued by his next friend to recover either the whole or one-third of the family property in the possession of the

HINDU LAW—PARTITION—*continued.*

(1) REQUISITES FOR PARTITION—*continued.*

widows of *L* and *S*. The principal defences to this suit were (1) that it was time-barred, and (2) that the plaintiff was not entitled to claim more than one-third of the property in suit:—*Held*, that the partition made by *S* and *L* in 1862 was invalid, as it was made without reserving any share for their minor brother *K* and without taking him into account. *K's* son was therefore entitled to recover the whole of the ancestral property as the sole surviving male member of the family. KRISHNABAI *v.* KHANGOWDA.

[18 Bom. 197

2.—*Death of plaintiff subsequent to decree for partition—Right of survivorship—Effect on vested right of plaintiff's representative.*] A decree for partition operates as a severance of the joint ownership. Where, therefore, *M*, a minor and only son, by his next friend sued his father and certain alienees of the family property for partition and obtained a decree, and subsequent to decree and pending appeal the plaintiff died, and *M's* mother was brought on the record as deceased plaintiff's legal representative:—*Held*, that the rights of *M's* representative were not affected as they would have been had the plaintiff died before decree; the right of survivorship which the defendant then possessed being extinguished by the decree. SUBBARAYA MUDALI *v.* MANIKA MUDALI.

[19 Mad. 345

3.—*Possession of one member of joint family at a time—What constitutes partition—Evidence as to impartibility—Compromise—Right of suit—Limitation.*] A zemindari granted by the Government in 1803 to a Hindu descended in his family, possession being held by one member at a time. The estate, however, was not impartible. But whether it was, or was not, impartible was adjudged immaterial to the question raised on this appeal. The last zemindar having died without issue in 1888, his widow was in possession when this suit was brought by a male collateral descended from a great grandfather common to him and to the last zemindar. The plaintiff claimed to establish his right as member of an undivided family holding joint property against the widow who alleged that her husband had been sole proprietor. In proof of this she relied on certain arrangements as having constituted partition, *viz*, that in 1816, two brothers, then heirs, agreed that the elder should hold possession, and that the younger should accept a village, appropriated to him for maintenance, in satisfaction of his claim to inherit: again, that in 1866, the fourth zemindar compromised a suit brought against him by his sister for her inheritance, on payment of a stipend to her, having already, on the claim of his brother, granted to him two villages of the estate; and, by the compromise, this was made conditional on the sister's claim being settled: again, that in 1871, the fourth zemindar having died pending a suit brought against him to establish the fact of an adoption by him, an arrangement was made for the maintenance of his daughter, and two

HINDU LAW—PARTITION—*continued.*

(1) REQUISITES FOR PARTITION—*concluded.*

widows who survived him, the previous grant for maintenance of his brother holding good, the adoption being admitted, and the suit compromised:—*Held*, that there was nothing in the above which was inconsistent with the zemindari remaining part of the common family property; and that the course of the inheritance had not been altered:—*Held*, also, that the claimant was not precluded by the family compromise of 1871, or in any way, from maintaining this suit; and that it was not barred by limitation. VIRAVARA THODHRAMAL RAJYA LAKSHMI DEVI *v.* VIRAVARA THODHRAMAL SURYA NARAYANA DHATRAZU.

[20 Mad. 256
[L. R. 24 I. A. 118

4.—*Award of arbitrators as to division of property followed by division of some of it—Decree in suit to enforce award—Date from which partition operates.*] Disputes between the members of a Hindu family were referred to arbitrators who made an award as to how the whole of the property should be divided. In pursuance of the award part of the moveable property was divided. Subsequently one of the members of the family died. The plaintiff, another member of the family, now sued to enforce the award and obtained a decree:—*Held*, on appeal, that the partition should be considered to have taken effect not from the date of the decree, but from the date of the award, which followed as it was by an actual division of some of the moveable property, effected a division at that time, and consequently that the share allotted to the deceased member of the family passed to his heir. SUBBARAYA CHETTI *v.* SADASIVA CHETTI.

[20 Mad. 490

(2) PROPERTY LIABLE TO PARTITION.

5.—*Proceeds of sale of a co-parcener's share—Claim of co-parceners to proceeds—Joint or separate property.*] In a suit for partition of family property it appeared that one of the deceased coparceners had sold to a stranger his undivided share in almost all the immoveable property of the family, and with part of the proceeds had discharged some debts, and with the rest had purchased certain lands, now claimed by his widow as his separate property:—*Held*, that the proceeds of the sale of the co-parcener's share so far as they were in excess of the requirements of his creditor's equity were not divested of the character of co-parcenary property, and the lands purchased therewith were consequently property subject to partition and not separate property as contended by his widow. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR.

[18 Mad. 73

6.—*Religious offices—Custom—Right to turn of worship.*] According to Hindu text-writers as regards public endowments, religious offices are naturally indivisible, though modern custom has

HINDU LAW—PARTITION—*continued.*

(2) PROPERTY LIABLE TO PARTITION—*concluded.*

sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns and of allowing alienation within certain restrictions. TRIMBAK RAMKRISHNA RANADE *v.* LAKSHMAN RAMKRISHNA RANADE.

[20 Bom. 495

7.—*Trust property—Joint trustees of temple—Suit for partition of rights as trustees.*] *Held*, that rights, as joint trustees to the management of and superintendence of worship at certain temples, none of the trustees having any personal pecuniary interest in the temples or their income, could not be made the subject of partition by a Civil Court, that is to say, that a Civil Court was not competent to grant a decree declaring that each of such trustees in rotation should for a certain definite period enjoy exclusively the rights of management and superintendence. *Mitta Kunth Audhicarry* v. *Neerunjun Audhicarry*, 14 B. L. R. 166; *Mancharam* v. *Pranshankar*, I. L. R. 6 Bom. 298; *Limba bin Krishna* v *Rama bin Pimplu*, I. L. R. 13 Bom. 548; *Anund Moyee Chowdrain* v. *Boykant Nath Roy*, 8 W. R. 193; *Pranshankar* v. *Prannath*, 1 Bom. 12; and *Ram Soondur Thakoor* v. *Taruck Chunder Turkoruttun* 19 W. R. 28, referred to. RAMAN LALJI MAHARAJ *v.* GOPAL LALJI MAHARAJ.

[19 All. 428

(3) PARTITION OF PORTION OF PROPERTY.

8.—*Partition of joint property situate in British India without taking into account other joint property situate outside British India.*] A Court can grant partition of property belonging to a joint Hindu family situated in British India without taking into account other property belonging to the family situated outside British India. RAMACHARYA *v.* ANANTACHARYA.

[18 Bom. 389

9.—*Suit for partition of property where portion is impartible.*] Where, in consequence of a suit for partition of the entire family property, a portion of the property is divided, but the remaining portion is declared impartible, the family remains undivided in respect to the latter portion. *Satrucharla Jagannadha Razu* v. *Satrucharla Samabhadra Razu*, I. L. R. 14 Mad. 240, referred to. MALLIKARJUNA PRASADA NAIDU *v.* DURGA PRASADA NAIDU.

[17 Mad. 362

10.—*Property left undivided at the time of partition—Suit to recover share of the produce—Amendment of plaint—Variance between pleading and proof.*] The circumstance that there has been a partition between the members of a joint Hindu family does not, in the absence of any special agreement between them, alter their rights as to the property still undivided. As to this they continue to stand to one another in the relation of members of an undivided Hindu family. A claim to a share of the produce of the property left undivided at a partition does not lie, because such a claim is based on the right to a particular share in the property itself which has no existence in the case of an undivided family. A suit for a share of the produce of the property left undivided at a partition cannot be amended by making it a suit for partition without entirely changing its character. GAVRISHANKAR PARABHURAM *v.* ATMARAM RAJARAM.

HINDU LAW—PARTITION—*continued.*

(3) PARTITION OF PORTION OF PROPERTY—*concluded.*

[18 Bom. 611

11.—*Right to partial partition.*] A member of a joint Hindu family may enforce by suit his right to a partition of a portion only of the joint family property. *Venkatachella Pillay v. Chinnaiya Mudaliar*, 5 Mad. 166, approved and followed. SUBRAMANYA CHETTYAR *v.* PADMANABHA CHETTYAR.

[19 Mad. 267

(4) RIGHT TO PARTITION.

(*a*) GENERALLY.

12.—*Right to partition a second time after bonâ fide mistake in first partition—Inclusion in first partition of property not subject to partition—Re-partition.*] The parties to a partition under a *bonâ fide* mistake included in the division certain property which did not belong to the family, but was held in mortgage from a third person who subsequently brought a suit for redemption and recovered it from the party to whom it had been allotted at the partition:—*Held*, that the party who had lost his share was entitled to claim a re-partition. MARUTI *v.* RAMA.

[21 Bom. 333

(*b*) MINOR.

13.—*Suit by minors for partition—In what cases there is a right of suit—Malversation.*] Under the Hindu laws a minor co-parcener cannot sue for partition unless his interests are (1) likely to be advanced thereby, or (2) protected from danger. When an adult co-parcener has taken up a hostile position to the interests of minor co-parceners and denied their rights, or sets up his own independent title, or where the minors live separately and the adult co-parcener does not support them, in all these cases it is in the interest of the minors that their share shall be partitioned and set apart. The plaintiffs, who were minors, sued by their next friend for a partition of their ancestral property in the possession of their step-brother, the defendant. It appeared that soon after their father's death, disputes and differences arose between plaintiffs' mother and their step-brother, which led to their separation in food and residence. The defendant managed the family property, but did not support the minors out of the rents and profits thereof. Hence the suit:—*Held*, that though no malversation was alleged or proved, the allegations in the plaint of disputes and separate residence and defendant's failure to support the plaintiffs were sufficient to justify the Court in permitting

HINDU LAW—PARTITION—*concluded.*

(4) RIGHT TO PARTITION—*continued.*

(*b*) MINOR—*concluded.*

the plaintiffs to maintain the suit. MAHADEV BALVANT *v.* LAKSHMAN BALVANT.

[19 Bom. 99

(*c*) PURCHASER FROM CO-PARCENER.

14.—*Suit for partition by a purchaser from a co-parcener — Decree for share of co-parcener in specific property—Variance between pleading and proof.*] In a suit to recover possession of property purchased by the plaintiff, if it is found that the property is not separate property of the plantiff's vendor but belongs to the joint family of which plantiff's vendor is a member, the plantiff is not entitled to a decree for his vendor's share in that property, and the suit must be dismissed. *Venkatarama* v. *Meera Ladar*, I. L. R. 13 Mad. 275, followed. PALANI KONAN *v.* MASAKONAN.

[20 Mad. 243

15.—*Alienation of share by co-parcener—His position and rights after such alienation—Position and rights of purchaser—Subsequent birth or death of other co-parceners.*] The alienation by a Hindu co-parcener of his rights in part or the whole of the joint family property does not place the purchaser of such rights in his own position. The purchaser becomes a sort of tenant-in-common with the co-parceners, admissible as such to his distributive share upon a partition taking place. Such an alienation before partition does not deprive the alienating co-parcener of his rights in the joint family. As the purchaser does not, by the death of the vendor, lose his right to a partition, so his position is not improved by the death of the other co-parceners before partition. The purchaser, like his alienor, is liable to have his share diminished upon partition by the birth of other co-parceners, if he stand by and does not insist on immediate partition. GURLINGAPA SATWIRAPA GIDWIR *v.* NANDAPA CHANBASAPA SOLAPURI.

[21 Bom. 797

(*d*) SON.

16.—*Suit by sons and nephews against their father and uncles—Right of suit.*] In a suit for partition of family property, the plaintiffs were the sons of one and nephews of others of the defendants who defended the suit:—*Held*, that the suit was maintainable. *Apaji Narhar Kulkarni* v. *Ramchandra Raoji Kulkarni*, I. L. R. 16 Bom. 29, dissented from. SUBBA AYYAR *v.* GANASA AYYAR.

[18 Mad. 179

17.—*After-born son—Property acquired subsequently to partition.*] A Hindu having two sons divided his property between them, reserving no share for himself. A third son was subsequently born, who now sued for a partition of the property which had been divided and other property subsequently acquired by his brothers by means of its proceeds:—*Held*, that the plaintiff was entitled to the relief claimed. CHENGAMA NAYUDU *v.* MUNISAMI NAYUDU.

[20 Mad. 75

HINDU LAW—REVERSIONERS. *Col*

1. Power of Reversioners to Alienate Reversionary Interest .. 518
2. Power of Reversioners to Restrain Waste and set aside Alienations ... 519
3. Arrangement between Widow and Reversioner ... 520
4. Conveyance by Widow with Reversioner's Consent ... 521

See DECLARATORY DECREE, SUIT FOR—REVERSIONERS.

[20 Bom. 202

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW — ALIENATION FOR LEGAL NECESSITY.

[19 All. 300

See HINDU LAW — INHERITANCE — SPECIAL HEIRS — FEMALES — DAUGHTERS.

[24 Calc. 339

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

[18 Bom. 534

See LIMITATION ACT, ART. 141.

[21 Calc. 8
[21 Bom. 376
[19 All. 357
[21 Bom. 646

See ONUS OF PROOF—HINDU LAW—ALIENATION.

[17 All. 125

(1) POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST.

1.—*Expectancy—Sale or mortgage of reversionary right in ancestral property—Onus of proof in contracts by reversioners as to their expectant rights—Transfer of Property Act (IV of 1882), s. 6, cl. (a).*] The Hindu law which prevails in the N.-W. Provinces recognizes no power in a reversioner to sell or mortgage his interest in expectancy, even although he may be the heir apparent. It is necessary when money-lenders in this country seek to enforce against the property of a Hindu family a contract of mortgage made by a reversioner, who, although of age at the time, was then still of tender years and without experience of business, for the Court, when the question is raised, to be satisfied that the reversioner understood the nature of the transaction and the effect of the contract which he was entering into, or that the reversioner of the family property, in which the reversioner had an estate in expectancy only, was liable for the debt in respect of which the mortgage is sought to be enforced, and that no unfair advantage was taken of the reversioner's youth and inexperience. ACHHAN KUAR *v.* THAKUR DAS.

[17 All. 125

HINDU LAW—REVERSIONERS—*contd.*

(2) POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

2.—*Suit for declaration by a remote reversioner—Specific Relief Act (I of 1877), s. 42—Parties.*] The plaintiff, claiming a remote reversionary interest in the estates of a deceased Hindu, sued for a declaration of the invalidity of an adoption made by the widow. It appeared that the nearer reversioners (who were in the first instance joined as defendants in the suit) refused to call in question the validity of the adoption, and that the plaintiff himself had concurred in it at the time when it took place:—*Held* (1) that the plaintiff was entitled to bring the suit without proof of fraud on the part of the nearer reversioners; (2) that the nearer reversioners were rightly impleaded in the suit. GURULINGASWAMI *v.* RAMALAKSHMAMMA.

[18 Mad. 53

3.—*Suit by reversioner to set aside an adoption by a Hindu widow—Right of suit—Remote reversioners—Succession to vatan property—Hereditary Offices Act (Bombay Act V of 1886), s. 2.*] The right to sue to set aside an adoption by a Hindu widow is, as a general rule, limited to the nearest reversionary heir, and if he, without sufficient cause, refuses to institute proceedings, or if he has precluded himself by his own act and conduct from so doing, or has colluded with the widow, or concurred in the alleged wrongful act, the next presumable reversioner will be entitled to sue. In such a case, upon a plaint stating the circumstances under which the more distant reversioner claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and should require the nearer reversioner to be made a party to the suit. *A*, a separated Hindu, died possessed of certain property, a portion of which was *vatan* land, and left him surviving a widow *R*, a daughter *M*, and the plaintiffs, who were his brother's sons. Subsequently *R* adopted *V* as a son. *M*, who lived with *R* and *V*, did not take any steps to dispute the alleged adoption. The plaintiffs now sued for a declaration that the adoption, if made in fact, was invalid, and that they were entitled to succeed to the property of *A* on the death of his widow *R*:—*Held*, that as the plaintiffs were entitled under s. 2 of Bombay Act V of 1886 to succeed to the *vatan* property in preference to *M*, after the death of *R*, and were the presumptive reversionary heirs after *R*, to the *vatan* property, and the only persons interested in disputing the adoption so far as the *vatan* property was concerned, the lower Court exercised a proper discretion in allowing the suit to be maintained by the plaintiffs. *Anund Kunwar* v. *Court of Wards*, I. L. R. 6 Calc. 764; L. R. 8 I. A 22; and *Gulab Singh* v. *Rav Kurun Sing*, 14 Moo. I. A. 193; 10 B. L. R. 1, referred to and followed. RAMABAI *v.* RANGRAV.

[19 Bom. 614

4.—*Suit to set aside alienation by Hindu widow—Grandsons of daughter of alienor's deceased husband.*] *Held*, in a suit to set aside an alienation made by a Hindu widow of property which had been of her deceased husband in his lifetime, that the sons of the son of a daughter of the alienor's late husband were, their father and grandmother being dead, reversioners, and, as such, entitled to sue to set aside the alienation made by the widow. *Krishnayya* v. *Pichamma*, I. L. R. 11 Mad. 287; and *Babu Lal* v. *Nanku Ram*, I. L. R. 22 Calc. 339, referred to. SHEOBARAT KUARI *v.* BHAGWATI PRASAD.

[17 All. 523

HINDU LAW—REVERSIONERS—*contd.*

(2) POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*concluded.*

(3) ARRANGEMENT BETWEEN WIDOW AND REVERSIONER.

5.—*Relinquishment by Hindu widow of her life interest to reversioner—Gift by reversioner to widow of moiety of estate—Declaratory decree, Suit for—Suit by reversioner in lifetime of widow—Right of suit—Specific Relief Act (I of 1877), s. 42.*] *M* died, possessed of certain immoveable properties, and leaving two widows, one of whom died shortly after him, leaving a daughter's son *R*. The other widow *S* came to an arrangement with *R*, under which, on 9th December, 1889, two deeds were executed, by the first of which *S* relinquished to *R* her life interest in the properties she inherited as widow of *M*, and by the other *R* conveyed to *S* an absolute right in half the properties so relinquished, retaining the other half himself. *R* died on 27th November, 1890, and his widow *P* came into possession of the half share of the properties belonging to him. In a suit by the plaintiff, as the next reversionary heir of *M*, for a declaration that the deeds were invalid, and did not affect his reversionary right:—*Held*, that the suit was maintainable in the lifetime of the widow. *Isri Dut Koer* v. *Hansbutti Koerain*, I. L. R. 10 Calc. 324; L. R. 10 I. A. 150, referred to; *Pirthi Pal Kunwar* v. *Guman Kunwar*, I. L. R. 17 Calc. 933; L. R. 17 I. A. 107; *Bhujendro Bhusan Chatterjee* v. *Triguna Nath Mookerjee*, I. L. R. 8 Calc. 761; and *Kattama Natchiar* v. *Dorasinga Tever*, 15 B. L. R. 83; 23 W. R. 314; L. R. 2 I. A. 169, distinguished:—*Held*, also, following the case of *Nobokishore Sarma Roy* v. *Harinath Sarma Roy*, I. L. R. 10 Calc. 1102, that the moiety of the properties, which was given by *S* to *R*, was absolutely alienated in his favour, and the plaintiff was not entitled to question the validity of the alienation, so far as that portion of the properties was concerned:—*Held*, further, that, though the effect of the decision in *Nobokishore Sarma Roy* v. *Harinath Sarma Roy* is to make the widow and the presumptive reversioners competent to deal with the estate absolutely for certain purposes, the widow cannot, with the consent of the presumptive reversioner, convert her life interest in any portion of her husband's estate which she retains for herself into an absolute interest freed from all restraint on alienation. *Behari Lal* v. *Madho Lal Ahir Gayawal*, I. L. R. 19 Calc. 236, referred to. The plaintiff was therefore entitled to a declaration that the deeds were

HINDU LAW — REVERSIONERS — *concluded.*

(3) ARRANGEMENT BETWEEN WIDOW AND REVERSIONER—*concluded.*

inoperative in affecting his reversionary interest, so far as regarded the moiety in possession of *S.* HEM CHUNDER SANYAL *v.* SARNAMOYI DEBI.

[22 Calc. 354

(4) CONVEYANCE BY WIDOW WITH REVERSIONER'S CONSENT.

6.—*Fraudulent consent given by nearest reversioner—Suit by a subsequent nearest reversioner to set aside alienations.*] In a suit brought by the nearest reversioner of a Hindu widow who had alienated portions of her husband's estate with the consent of the nearest reversioner alive at the date of the alienation (since deceased), it was found that the alienations were colourable transactions fraudulently got up for the purpose of defeating the plaintiff's claim:—*Held*, that the consent of the nearest reversioner, who must have been aware of the fraud, was of no avail to validate the transactions impeached, and that they were therefore invalid as against the plaintiff. KOLANDAYA SHOLAGAN *v.* VEDAMUTHU SHOLAGAN.

[19 Mad. 337

7.—*Sale by a Hindu widow—Whether the reversioner consented that she should sell the whole inheritance, or only her life-estate.*] The sale by a Hindu widow of a share in village lands, of which share her husband had been proprietor, having taken place without justifying necessity, could extend no further than to transfer her interest as a widow, for life, unless the consent of the reversionary heir had been given to her selling the whole inheritance. The appellant's case was that this consent had been given. The evidence of its having been given was the fact that this heir, having been appointed the widow's *mukhtar* for the purpose, had executed, on her behalf, a sale-deed containing words to the effect that the vendee had become (as the English translation on the record expressed it) "absolute" owner of the share sold. This heir, however, received no consideration to induce him to relinquish the reversionary title; and, on the death of the widow, his descendant claimed the inheritance against the vendee's son, then in possession:—*Held*, that it had not been made so clear that the conveyance transferred the whole estate of inheritance as to cause it to follow that the reversionary heir, when shown to have consented to the transfer by the widow, must be taken to have consented to a transfer by her of the whole estate of inheritance. Therefore, the judgment of the Appellate Court below, that the transfer extended only to the widow's life-estate, must be maintained. JIWAN SINGH *v.* MISRI LAL.

[18 All. 146

[L. R. 23 I. A. 1

HINDU LAW—STRIDHAN.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW.

[21 Bom. 739

HINDU LAW—STRIDHAN—*continued.*

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[19 All. 133

1.—*Mithila law—Succession to stridhan property.*] The husband's sister's sons are preferential heirs to the husband's paternal great-grandfather's great-grandsons in the succession to *stridhan* property. MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH.

[21 Calc. 344

2.—*Succession to stridhan property—Sister-in-law.*] A childless Hindu widow, who had been predeceased by her parents, died, leaving *stridhanam* property. Her brother's widow claimed to be entitled to inherit that property and sued to enforce her claim:—*Held*, that, whether the marriages of the deceased and her mother respectively had taken place in a superior or an inferior form, the plaintiff was not entitled to inherit the *stridhanam* property in question. THAYAMMAL *v.* ANNAMALI MUDALI.

[19 Mad. 35

3.—*Estate of married daughter in stridhanam property of mother.*] Under the Hindu law in force in Southern India, a married daughter, who succeeds to her mother's immoveable *stridhanam* property, takes a life interest only, and after her death it passes to her mother's heir. VENKATARAMAKRISHNA RAU *v.* BHUJANGA RAU.

[19 Mad. 107

4.—*Inheritance by a grand-daughter for a limited estate—Succession by heir of last full owner.*] A Sudra (*Lingayat*) died in 1826 leaving his property to *A*, *B* and *C*, his daughters, who enjoyed it for some time jointly. In 1860 a settlement was made by (i) *A*, the sole surviving daughter, (ii) *D*, who was the daughter of *B*, and (iii) the present plaintiff, who was the only son of *C*, and also the stepson of *D*. Under the settlement two-thirds of the property were given to the present plaintiff, and the rest was divided between *A* on the one hand and *D* and *E* on the other. *E* was the daughter of *D*. Subsequently *D* and *E* acquired *A's* share under a deed of gift, dated 5th June, 1863. *D* died in 1883. *E* had died previously, leaving the present defendant (her husband) and a daughter *F*, who died an infant without issue in 1891. The plaintiff now sued to recover the property which passed to the line of *B*:—*Held* (1) that the settlement of 1860 on its true construction gave to *D* and *E* a life interest only in the event of their having no descendants, but an estate of inheritance otherwise, and that that disposition was valid, and accordingly that in the event which happened they took a heritable estate; (2) that under the settlement of 1860 and the deed of gift of 1863 *D* and *E* took as joint tenants with benefit of survivorship, and not as tenants-in-common, and accordingly that *D* became sole full owner of the property on the death of *E*, whose husband thus acquired no title as her heir; (3) that *F* inherited the property, but only for a limited

HINDU LAW—STRIDHAN—*concluded.*

estate, and that the plaintiff was entitled to succeed as heir to *D*, the last full owner. VIRASANGAPPA SHETTI *v.* RUDRAPPA SHETTI.

[19 Mad. 110

HINDU LAW—USURY.

1.—*Interest—Rule of damdupat—Balance of principal actually due at date of suit—Part payments of principal.*] The rule of *damdupat* limits the arrears of interest recoverable at any one time by the amount of principal remaining due at that time. DAGDUSA SHEVAKDAS *v.* RAMCHANDRA.

[20 Bom. 611

2.—*Rule of damdupat—Applicability of the rule—Mortgage the terms of which make an account current necessary.*] The operation of the rule of *damdupat* is excluded in all mortgages, the terms of which necessitate the existence of an account current between mortgagor and mortgagee, whatever the state of the account may be. *Ganesh Dharnidhar* v. *Keshavrav Govind*, I. L. R. 15 Bom. 625, overruled. GOPAL RAMCHANDRA *v.* GANGARAM ANAND SHET.

[20 Bom. 721

3.—*Interest—Rule of damdupat—Account directed by decree in mortgage suit between Hindus—Interest for periods before, during, and after, the six months allowed by decree for redemption.*] Where a mortgage decree, in a suit between Hindus, directed an account to be taken of what was due to the plaintiff for principal and interest, the latter to be computed at the contract rate for six months, provided for redemption on payment of the amount due within the six months, and directed in case of default of payment that interest due be added to the principal sum, interest thereafter to be computed on the aggregate amount at 6 per cent:—*Held*, that in taking the account, the rule of *damdupat* was rightly applied to the interest accruing on the mortgage debt both previous to and during the six months allowed for redemption, notwithstanding the form of the decree. *Nobin Chunder Bannerjee* v. *Romesh Chunder Ghose*, I. L. R. 14 Calc. 781, referred to; and that the same rule was applicable to the interest accruing after the period of six months had elapsed. When the rule of *damdupat* has once been applied in any account, directed to be taken by the Court, and interest equal in amount to the principal sum has been allowed in the account, the application of such rule has the effect of preventing the allowance of any further interest, not only for the period of six months allowed for redemption, but also subsequently without limitation of time. RAM KANYE AUDICARY *v.* CALLY CHURN DEY.

[21 Calc. 840

4.—*Interest—Rule of damdupat when applicable—Mortgage—Hindu creditor claiming interest from a debtor not a Hindu—Redemption, Suit for.*] In a redemption suit brought by a Mahomedan against a Hindu, it was found on taking the accounts that a sum of Rs. 17,519 was due

HINDU LAW—USURY—*continued.*

by the plaintiff (mortgagor) to the defendant (mortgagee). Of this sum, Rs. 6,500 were the principal, and the remainder (Rs. 11,019) was for interest. The plaintiff contended that the defendant being a Hindu was bound by the rule of *damdupat*, and could not claim as interest more than the amount of the principal:—*Held*, that the rule of *damdupat* did not apply; and that the plaintiff was liable to the defendant for the whole amount. The rule of *damdupat* only applies when the debtor is a Hindu. DAWOOD DURYESH *v.* VULLUBHDAS PURSHOTAM.

[18 Bom. 227

5.—*Interest—Mortgage, Decree on—Damdupat, Rule of—Report of Registrar, Confirmation of.*] Where the mortgagee obtained the usual mortgage decree, and on the Registrar's report there was found due on the mortgage a total sum less than double the amount of the principal:—*Held*, that the mortgagee was entitled to claim further interest at 6 per cent. on the total amount found due by the Registrar until satisfaction of the judgment debt:—*Held*, also, that the rule of *damdupat* is not applicable, if it was not applicable at the time when the decree became final and binding. *Semble:* Such time being from the date of the confirmation of the Registrar's report. *Buggoban Chunder Roy Chowdhry* v. *Pran Coomaree Dassee*, I. L. R. 23 Calc. 906: and *Kanaye Lall Khan* v. *Anund Lall Dass*, I. L. R. 23 Calc. 903, followed. LALL BEHARY DUTT *v.* THACOMONEY DASSEE.

[23 Calc 899

KANAYE LALL KHAN *v.* ANUND LALL DASS.

[23 Calc. 903 note

BUGGOBAN CHUNDER ROY CHOWDHRY *v.* PRAN COOMAREE DASSEE.

[23 Calc. 906 note

6.—*Rule of damdupat—Mortgage by Mahomedan to Hindu—Assignment of mortgaged land by mortgagor to Hindu assignee—Subsequent suit by mortgagee against assignee—Interest.*] *A*, a Mahomedan, having in 1869 mortgaged certain land for Rs. 61 to *B*, a Hindu, afterwards assigned it to *C*, who was also a Hindu. At the date of this assignment the interest due on the mortgage (Rs. 122-15-10) was much more than the principal debt. *B* (the mortgagee) subsequently sued *A* and *C* for Rs. 270, being Rs. 61 for principal and Rs. 209 for interest. *A* did not appear. *C* contended that, the plaintiff and himself being Hindus, the law of *damdupat* applied, and that only as much interest as principal could be recovered. The lower Courts passed a decree for the principal (Rs. 61) together with all interest due at the date of the assignment to *C*. They disallowed subsequent interest, as the amount then due was already more than the principal. On appeal to the High Court:—*Held* (confirming the decree) that *C* was not personally liable to pay anything at all, but that land which he had purchased was charged with the amount due at the date of his purchase. Unless, therefore, he wished the land to be sold, he should pay that amount. The rule

HINDU LAW—USURY—*concluded.*

of *damdupat* did not apply in this case to the original mortgagor, who was a Mahomedan. He charged the land with a debt which included principal and interest, and he and his land were liable for both. He could not by any assignment prejudice his creditor or reduce the amount due to him, nor could he by assigning his land to a Hindu free it from any charge that existed on it at the date of the assignment. HARILAL GIRDHARLAL *v.* NAGAR JEYRAM.

[21 Bom. 38

7.—*Rule of damdupat—Mortgage — Original mortgagor a Hindu—Assignment of mortgage to Mahomedan purchaser—Suit by Mahomedan purchaser for redemption—Rule of damdupat how far applicable.*] A Hindu mortgaged his property in 1843 to a Mahomedan for Rs. 150, with interest at 12 per cent. per annum. On the 5th April, 1880, the Hindu mortgagor's interest was sold to the plaintiff, who was a Mahomedan. In March, 1893, the plaintiff sued for redemption, both parties to the suit being Mahomedans:—*Held*, that as long as the mortgagor was a Hindu (*i.e.*, until 1880) the rule of *damdupat* applied, and that, as soon as the interest doubled the principal, further interest stopped. The sum of Rs. 300 was therefore the full amount of debt for which the land could be charged and liable in the hands of a Hindu debtor. But, on the 5th April, 1880, the plaintiff (a Mahomedan) become the debtor. The rule of *damdupat* then no longer applied: the stop was removed, and interest again began to run. The decree, therefore, ordered the plaintiff to redeem on payment of Rs. 300 (*i.e.*, double the principal Rs. 150) with further interest at Rs. 12 per annum from the date of his purchase (5th April, 1880) until payment. ALI SAHEB *v.* SHABJI.

[21 Bom. 85

HINDU LAW—WIDOW.

		Col.
1.	Interest in Estate of Husband	526
	(*a*) By Inheritance	526
2.	Power of Widow	526
	(*a*) Power of Disposition or Alienation	526
3.	Decrees against Widow as representing Estate or Personally	528

See HINDU LAW—ADOPTION—EFFECT OF ADOPTION.

[22 Calc. 565

See HINDU LAW—ADOPTION — REQUISITES OF ADOPTION—AUTHORITY.

[18 Mad. 53
[24 Calc. 589

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE — MARRIAGE.

[22 Calc. 589

HINDU LAW—WIDOW—*continued.*

See HINDU LAW — INHERITANCE — SPECIAL HEIRS—FEMALES—WIDOW.

[18 Mad. 168
[21 Bom. 739

See HINDU LAW—MAINTENANCE—FORM OF ALLOWANCE AND CALCULATION OF AMOUNT.

[22 Calc. 410

See HINDU LAW—MAINTENANCE—RIGHT OF MAINTENANCE—WIDOW.

[17 Mad. 392
[22 Calc. 410

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[21 Bom. 376
[23 Calc. 670

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[17 Mad. 34
[19 Bom. 809
[22 Calc. 445
[23 Calc. 942

See ONUS OF PROOF—HINDU LAW—ALIENATION.

[17 All. 1, 125
[L. R. 21 I. A. 148

(1) INTEREST IN ESTATE OF HUSBAND.

(*a*) BY INHERITANCE.

1.—*Rents of immoveable property—Execution of decree for money—Application for receiver of rents of immoveable property of deceased Hindu in the hands of his widow.*] *Held* that a Court executing a simple money decree obtained against a sonless separated Hindu was not competent to appoint a receiver of the rents, accruing since his decease, of the judgment-debtor's immoveable property, then in the hands of his widow as her widow's estate, such rents not being assets of the deceased, but the personal moveable property of the widow, and this even if the decree-holder had not, as in fact he had, agreed for consideration not to execute his decree against the moveable property of the widow. KANNO DAI *v.* LACY.

[19 All. 235

(2) POWER OF WIDOW.

(*a*) POWER OF DISPOSITION OR ALIENATION.

2.—*Widow's power to dispose of moveables bequeathed to her by her husband—Mayukha law.*] *Held*, that a widow in Gujarat under the law of Mayukha had power to bequeath moveable property taken by her under the will of her husband which gave her express power of free disposition. *Gadadhar Bhat* v. *Chandrabhagabai*, I. L. R. 17 Bom. 690, distinguished. *Per* RANADE, J.—There is a threefold distinction between the moveable and immoveable property, between title by bequest, and a title by inheritance, and a distinc-

HINDU LAW—WIDOW—*continued.*

(2) POWER OF WIDOW—*continued.*

(*a*) POWER OF DISPOSITION OR ALIENATION—*continued.*

tion between the Mayukha and Mitakshara, which must be borne in mind before the rights of a widow in Gujarat, claiming under a will which gave her express powers of free disposition over the residue of moveable property, are negatived solely on the authority of the Full Bench decision quoted above. If the widow in this case had made no disposition herself, the moveable property, in respect of which freedom of disposition had been allowed her, would have gone to the reversioner as her husband's heir. MOTILAL LALUBHAI *v.* RATILAL MAHIPUTRAM.

[21 Bom. 170

3.—*Lease granted by Hindu widow while in possession of widow's estate.*] A widow in possession of her widow's estate in a zemindari made a grant of a *patni* tenure under it to a lessee at a rent. In this suit, brought by the reversionary heir, on her death, with the object of having the grant set aside as invalid as against him, the *patni* lease was not proved to have been made with authority or from necessity justifying the alienation by the widow:—*Held*, that the *patni* was, on the death of the widow, only voidable, and not of itself void; so that the plaintiff, the next inheritor of the zemindari, might then elect to treat it as valid. MODHU SUDAN SINGH *v.* ROOKE.

[25 Calc. 1

[L. R. 24 I. A. 164

4.—*Right of widow to sell property inherited from her husband—Suit by reversioner to set aside sale by widow.*] *B* having during his lifetime mortgaged certain property, the income of which was sufficient only to pay interest on a portion of the mortgage-debt, his widow, after his death, sold it before the mortgage-debt fell due. The reversioners sued to set aside the sale:—*Held*, that although there might have been no absolute necessity for the widow to sell the property to provide herself with maintenance, still, as there was no other family property, the property in question must necessarily have been sold at the expiration of the time fixed by the mortgage, and the sale by the widow ought to be supported. A widow, like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to her expectant heirs. VENKAJI SHRIDHAR *v.* VISHNU BABAJI BERI.

[18 Bom. 534

5.—*Non-ancestral and ancestral property—Agarwala Banias of Saraogi sect of Jains.*] Amongst Agarwala Banias of the Saraogi sect of the Jain religion, a widow has full power of alienation in respect of the non-ancestral property of her deceased husband; but she has no such power in respect of the property which is ancestral. SHIMBHU NATH *v.* GAYAN CHAND.

[16 All. 379

HINDU LAW—WIDOW—*continued.*

(2) POWER OF WIDOW—*concluded.*

(*a*) POWER OF DISPOSITION OR ALIENATION—*concluded.*

6.—*Alienation by widow without legal necessity.*] The property in dispute (consisting of 12 *thikans* or plots of land) was originally held by *A* and *B* as tenants-in-common, and they divided the income according to their respective shares. After *A's* death, his widow adopted *C* on condition that she was to remain in absolute possession and enjoyment for her life, and that *C* was to succeed to the estate after her death. The widow mortgaged 9 out of the 12 *thikans*, sold one, and granted a perpetual lease of another to the defendant. All these alienations to the defendant were made without any legal necessity. The defendant also purchased *B's* share in the *thikans* in dispute. The plaintiff purchased *C's* rights, and, on the widow's death, sued to set aside her alienations and to obtain joint possession with the defendant of all the *thikans*. The defendant pleaded (*inter alia*) that the widow's alienations were valid and binding on the plaintiff, and that the plaintiff's remedy was a partition suit:—*Held*, that *A's* widow, not having higher powers than those of an ordinary Hindu widow who succeeds as heir to her sonless husband, could only make valid alienations for purposes warranted by the law. As no legal necessity was shown in respect of the alienations in question, which were made long after disputes had commenced between her and her adopted son, they were not binding on him or on his alienee, the plaintiff. ANTAJI *v.* DATTAJI.

[19 Bom. 36

7.—*Gift to Po-Brahman—Alienation by widow for religious purposes.*] When a Po-Brahman receives a salary for the performance of his duties, a gift to him by the widow of the person whose exequial rites he has been appointed to perform, to reward him for having performed any of those exequial rites, is not a gift binding on the reversioners. MAHADEVI *v.* NEELAMANI.

[20 Mad. 269

(3) DECREES AGAINST WIDOW AS REPRESENTING ESTATE OR PERSONALLY.

8.—*Hindu widow in possession of husband's estate—Sale of the land in execution of a personal decree obtained against the widow—Suit by the nephew and reversioner of the deceased husband to recover the land from the purchaser.*] A Hindu widow sued to recover certain land which belonged to her late husband from his brother. The suit was compromised by means of a *razinama*, one of the terms of which was that the widow should remain in possession of and enjoy the property, but should not alienate it without the brother's permission. Subsequently a personal decree was obtained against the widow, and the land being sold in execution, was purchased by the defendant in the present suit, in which the first plaintiff was the nephew and reversioner of the deceased husband:—*Held*, that the suit against the widow being on a personal claim, only her limited interest in the

HINDU LAW—WIDOW—*continued.*

(3) DECREES AGAINST WIDOW AS REPRESENTING ESTATE OR PERSONALLY—*contd.*

property was sold in execution, and that consequently the plaintiff was entitled to the property. *Jugul Kishore* v. *Jotendro Mohun Tugore*, I. L. R. 10 Calc. 985, distinguished, and the principle in *Baijun Dooby* v. *Brij Bhookun Lall Awusti*, I. L. R. 15 Calc. 133; L. R. 2 I. A. 275, applied. NARANA MAIYA *v.* VASTEVA KARANTA.

[17 Mad. 208

9.—*Mesne profits payable under a decree against a Hindu widow and other defendants—Subsequent suit for contribution against the widow by one of the defendants from whom the whole amount of mesne profits had been realized—Sale in execution of decree—Rights of the auction-purchaser.*] *M*, widow of *N*, a Hindu, and *K* (brother of *N*) jointly brought a suit against *C*, her sons and others, for recovery of possession of certain property which had devolved upon *N* and *K* by inheritance, obtained a decree, and were put into possession. *G*, one of the sons of *C*, subsequently brought a suit against *M* and the legal representatives of *K*, then deceased, and also against *J* (to whom *K* had sold a portion of the property after the decree), and obtained a decree with mesne profits for his share of the same property. *G* then sold the decree to *R*, who executed it for mesne profits against *J* alone, and realized the entire decretal amount from him. *J* thereupon brought two suits for contribution against *M* and the legal representatives of *K*, on account of the mesne profits payable by them, according to their respective shares, and obtained decrees. In execution of one of these decrees passed against *M*, he sold the property in suit belonging to the estate of *N*, and purchased a moiety of it himself. In a suit on the death of *M* by the reversionary heirs of *N* to recover possession of his share of the property, in which his widow *M* had only a life-interest, on the allegation that only her life-interest and not the entire estate passed:—*Held*, that the suit for contribution brought by *J* was a suit to recover a debt due by the estate. The amount of the debt in the shape of mesne profits had been decreed against *M* and others, as representing the estate of *N* and *K*, and it was not therefore a personal debt of *M*. That being so, the purchaser at the auction sale took the entire estate and not merely the qualified interest of the widow. *Jugul Kishore* v. *Jotendro Mohun Tugore*, I. L. R. 10 Calc. 985, referred to. BARODA KANTA CHATTAPADHYA *v.* JATINDRA NARAIN ROY.

[22 Calc. 974

10.—*Decree in compromise made by widow after adoption of son in suit on mortgage executed before adoption.*] *A*, executrix to the estate of her husband, executed a mortgage bond, partly for money due on bonds executed by her husband in his lifetime, and partly for payment of Government revenue due from the estate. She then adopted a son, *B*, under authority granted by the will of her husband. After the adoption, a suit was brought on the mortgage bond against *A*, and a decree was

HINDU LAW—WIDOW—*concluded.*

(3) DECREES AGAINST WIDOWS AS REPRESENTING ESTATE OR PERSONALLY—*concld.*

passed in terms of a compromise for payment by instalments, the mortgaged property remaining hypothecated as before. Default was made in payment of the instalments, and the decree-holder applied for execution of the decree, and *B* was substituted for *A* in the proceedings in execution. An objection was raised that the compromise decree was only a personal decree against *A*, and execution could not proceed against *B*:—*Held*, that it was not a mere personal decree against *A*, but was binding on the estate inherited by *B* from his adoptive father. *Ishan Chunder Mitter* v. *Buksh Ali Soudagur*, Marsh. 614; *General Manager of Raj Durbhunga* v. *Ramput Singh*, 14 Moo. I. A. 605; 10 B. L. R. 294; *Bissessur Lall Sahoo* v. *Luchmessur Sing*, L. R. 6 I. A. 233; 5 C. L. R. 477; and *Hari Saran Moitra* v. *Bhubaneswari Debi*, I. L. R. 16 Calc. 40; L. R. 15 I. A. 195, referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY.

[23 Calc. 374

HINDU LAW—WILL.

		Col.
1.	Power of Disposition	... 530
2.	Construction of Wills	... 530

(1) POWER OF DISPOSITION.

1.—*Holder of impartible estate.*] The holder of an impartible estate may alienate it by will to the same extent that he may alienate it by *gift inter vivos*. COURT OF WARDS *v.* VENKATA SURYA MAHIPATI RAMAKRISHNA RAU.

[20 Mad. 167

(2) CONSTRUCTION OF WILLS.

2.—*Misdescription of legatee.*] The holder of an impartible estate may alienate it by will to the same extent that he may alienate it by gift *inter vivos*. A testator made a bequest to "*A B* my *avurasa* son," knowing that *A B* was not his *avurasa* son:—*Held*, that the misdescription was immaterial, and that *A B* took the bequest. COURT OF WARDS *v.* VENKATA SURYA MAHIPATI RAMAKRISHNA RAU.

[20 Mad. 167

3.—*Adoption directed by will—Bequest making adoption a condition precedent to taking under will.*] Where a Hindu testator directed that a boy should be taken in adoption, and added "to this boy, all the things mentioned in my will having been done, I give the residue of my estate as his inheritance, and I appoint him as my heir:"—*Held*, that adoption was a condition precedent, and that the boy not having been adopted could not take under the will. *Bireswar Mukerji* v. *Ardha Chunder Roy*, L. R. 18 I. A. 101; I. L. R. 19 Calc. 452, distinguished; *Shamavahoo* v. *Dwarkadas Vasanji*, I. L. R. 12 Bom. 202, followed. KARAMSI MADHOWJI *v.* KARSANDAS NATHA.

[20 Bom. 718

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

4.—*Right of adopted son to the corpus and surplus income during the lifetime of his adoptive mother—Direction for accumulations with proper limitation—Power of Hindu testator.*] After giving authority for the adoption of a son, a testator by the ninth clause of his will, after directing certain payments to be made out of the income of the estate, proceeded as follows: "But in no case shall such adopted son have or exercise any control or dominion over my estate and effect until the death of my wife; after which events, I direct my said executors and trustees to make over the whole of my estate and effects, both real and personal, moveable or immoveable whatsoever and wheresoever and of what nature or quality soever, to such adopted son who shall survive my wife, if he shall have attained his age of eighteen years during the lifetime of my wife, or on his so attaining such age after her decease, to whom and his heirs I give, devise and bequeath the same:"—*Held*, that the adopted son was not presently entitled to the surplus income or profits of the properties until the death of his adoptive mother, nor to have the corpus (even after provision being made for the payments mentioned in the will) of the estate made over to him. It is not incompetent for a Hindu testator, with proper limitation, to direct an accumulation of the income of property which under his will vests in his executors or trustees. In the absence of special provision the limit must be that which determines the period during which the course or devolution of property can be directed and controlled by a testator. AMRITO LALL DUTT *v.* SURNOMOYE DASSEE.

[24 Calc. 589

5.—*Executor and residuary legatee, Powers of, to alienate when there is restriction against alienation in will.*] *D*, residuary legatee under a will, which provided that he should not be competent to alienate the properties he took under it, having obtained an order for grant of probate in his favour, sold certain properties covered by the will to *J*. In execution of a decree passed against *D*, in his personal capacity, the properties were attached, and *J* preferred a claim on the ground of his purchase. The claim was allowed, and the properties were released from attachment. In a suit brought by the decree-holder for a declaration that the properties were liable to be sold in execution of his decree, it was *held*, that the position of *D* under the will being not merely that of an executor but that of a residuary legatee as well, and the restrictions imposed upon *D* by the will invalid under the ruling in *Ashutosh Dutt* v. *Doorga Churn Chatterjee*, I. L. R. 5 Calc. 438; L. R. 6 I. A. 182, *D* had power to make the alienation in favour of *J*. JAGOBANDHU DEY PODDAR *v.* DWARIKA NATH ADDYA.

[23 Calc. 446

6.—*Charitable bequest—Bequest to dharmada—Bequest void for uncertainty.*] A bequest in favour of *dharmada* is void by reason of uncertainty. The law on this point is the same in the Mofussil as in the Presidency town. DEVSHANKAR NARANBHAI *v.* MOTIRAM JAGESHVAR.

[18 Bom. 136

7.—*Gift to dharam—General and indefinite charitable bequest.*] One *C S* died without issue on 6th January, 1869, leaving two widows, *C* and *N*, who thereupon took a widow's estate in such of his immoveable property as was not validily disposed of by him. By his will, dated 5th January, 1869, he appointed the defendant *V* and two others his executors and trustees. The two latter were dead at the date of this suit. By his will he left two immoveable properties to his wife *C* for life and two to his wife *N*, and the residue of his property he left to his trustees, directing them to apply the same in charity (*dharam*). The properties left to his widows were to revert on their death to the charity fund held by the said trustees. *C* died in 1871. *N* survived till 1888 and died in November of that year, leaving a will. The plaintiff was the nephew (brother's son) and heir of the testator, and he sued to have his rights in and to his uncle's estate ascertained. He contended that the bequests for *dharam* were void, and that the property bequeathed for that purpose was undisposed of. He claimed to be entitled to the whole of the testator's immoveable property including that which had been devised to the widows for life:—*Held*, that the devise to *dharam* was too general and indefinite for the Court to enforce, and was therefore void. VUNDRAVANDAS PURSHOTAMDAS *v.* CURSONDAS GOVINDJI.

[21 Bom. 646

8.—*Contingent executory bequest over—Period of distribution of property bequeathed — Succession Act (X of 1865), s. 11—Hindu Wills Act (XXI of 1870).*] A Hindu at his death left three sons, the eldest of full age and the other two minors. In his will were the directions: "My three sons shall be entitled to enjoy all the moveable and immoveable properties left by me equally. Any one of the sons dying sonless, the surviving sons shall be entitled to all the properties equally":—*Held*, that these words gave a legacy to the survivors contingently on the happening of a specified uncertain event, which had not happened before the period when the property bequeathed was distributable, that period of distribution being the time of the testator's death. It would be impossible to decide that the period was postponed by reason of the personal incapacity of some of the beneficiaries. Therefore, under s. 111 of the Succession Act, 1865, applicable under the Hindu Wills Act, 1870, the legacy to the surviving brothers could not take effect, and the original gift to the testator's three sons was absolute to each in equal shares and indefeasible on his death. NORENDRA NATH SIRCAR *v.* KAMALBASINI DASI.

[23 Calc. 563

[L. R. 23 I. A. 18

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

9.—"*Malik*," *Meaning of, as applied to female legatees—Contingent bequest—Gift absolute—Life estate—Succession Act* (*X of* 1885), *ss.* 111 *and* 125 *—Direction against alienation.*] A Hindu survivor of two brothers in a joint family under the Mitakshara law, died, leaving a widow and two daughters, a brother's widow, and three daughters of his brother. In his will it was provided (*inter alia*) that his daughters and brothers' daughters "shall be *maliks* and come in possession in equal shares of all the moveable and immoveable properties." It was also provided that in the event of any of the daughters of the testator or of his brother dying childless her share "shall devolve in equal shares on the surviving daughters, but such share shall have no connection with her husband's family." The will made a further provision that the daughters "shall not have on any account the right to sell or alienate their shares":—*Held* (1) The expression *maliks* ordinarily implies an absolute gift, and there is no authority for introducing into the will the idea that a female ought not to obtain anything beyond an estate for her lifetime. (2) Having regard to s. 111 of the Indian Succession Act (applicable under the Hindu Wills Act, 1870) and the Privy Council case of *Norendra Nath Sircar* v. *Kamalbasini Dasi*, I. L. R. 23 Calc. 563, the provision of survivorship applied only to the case of a daughter dying during the lifetime of the testator, and did not take effect in the present case, the daughter whose share was in question having died several years after the testator's death. (3) As to the direction against alienation, s. 125 of the Indian Succession Act provides for a case like this, and the daughters receive their shares as if there was no such direction. (4) The will was not open to the construction that there was a life-estate only conferred by it on the daughters. LALA RAMJEWAN LAL *v.* DAL KOER.

[24 Calc. 406

10.—*Testamentary bequest contained in wajib-ul-arz—Devise by a Hindu in favour of a female—Presumption as to intention of testator concerning the estate to be taken by the devisee.*] One *M R*, a separated Hindu, died in 1882, leaving him surviving two daughters and a daughter-in-law *S*, the widow of a pre-deceased son. During his lifetime *M R* had caused to be recorded in the *wajib-ul-araiz* of two villages, D and A, owned by him— "*S*, wife of my son *S R*, shall be regarded as owner after my death." In the *wajib-ul-arz* of a third village the following entry was recorded—"After my death *G*, the adopted son, and *S*, the wife of *S R*, shall have a right to the property." Subsequently to the death of *M R* the nature of the estate taken by *S* in the villages D and A came before a Court of law, and *S* did not challenge the decree which was then passed declaring her interest to be only a life-estate:—*Held* that, under the above circumstances, and having regard to the sentiments prevalent amongst Hindus on the subject of the devolution of immoveable property upon females, the devise of the villages D and A must be taken to convey

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

an estate for life only and not the absolute ownership in the villages. *Soorjeemoney Dossee* v. *Denobundhoo Mullick*, 6 Moo. I. A. 526; and *Mahomed Shumsool Huda* v. *Shewukram*, L. R. 2 I. A. 7; 14 B. L. R, 226, referred to; *Hira Bai* v. *Lakhsmi Bai*, I. L. R. 11 Bom. 573; and *Koonj Behari Dhur* v. *Prem Chand Dutt*, I. L. R. 5 Calc. 684, considered. MATHURA DAS *v.* BHIKHAN MAL.

[19 All 16

11.—*Bequest to widow*—"*Take possession of and enjoy as owner*"—*Life-estate—Qualified power of control of Hindu widow.*] Where a Hindu by his will directed that after his death his wife was to "take possession of and enjoy my property," and in another passage declared that "just as I am the owner so she is to be the owner," but there were no words of inheritance used, nor did he directly give his wife any power of disposition over the property:—*Held*, that she took only a life-interest in the property. The Courts have always leaned against such a construction of the will of a Hindu testator as would give to the widow unqualified control over his property. HARILAL PRANLAL *v.* BAI REWA.

[21 Bom. 376

12.—*Devise to widow—Widow's estate—Stridhan.*] One *D*, a separated sonless Hindu, made a will in favour of his wife, of which the material clause was as follows:—"After my death the said Musammat * * * is to be the person in possession and ownership in place of me, the executant, of all the bequeathed property aforesaid by right of this will." *D* died, leaving a widow and a daughter who was married to one *J*. The widow obtained possession of the property comprised in the will on the death of *D* The daughter died in the lifetime of the widow, who thereupon made a will leaving the property which had come to her from *D* to *J* On the death of the widow certain persons alleging themselves to be the nearest reversioners to *D* claimed the property:—*Held*, that, on the wording of the will, and having regard to the surrounding circumstances of the case, the testator having no near male heirs, and the plaintiffs, if reversioners at all, being remote reversioners, the intention of the testator *D* was to leave the property in question to his widow as her *stridhan*, to descend to her heirs. *Koonjbehari Dhur* v. *Premchand Dutt*, I. L. R. 5 Calc. 634, dissented from; *Mahomed Shumsool Huda v. Shewukram*, L. R. 2 I. A. 7; 14 B. L. R. 226; and *Hira Bai* v. *Lakshmi Bai*, I. L. R. 11 Bom. 573, distinguished. JANKI *v.* BHAIRON.

[19 All. 133

13.—*Devise of immoveable property—Bequest to widows—Life interest—Succession Act* (*X of* 1865), *s.* 82—*Hindu Wills Act* (*XXI of* 1870), *s.* 3—*Gift over.*] A Hindu testator gave a twelve-anna share of his property to his two wives by cl. 2 of his will which was as follows:—"My first and second wives shall together be entitled to twelve annas of all the properties left by me, and *D* and

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

R, sons of my father's sister's sons *R NC*, deceased, who have been living in commensality from the time of my predecessor, shall be entitled to a four-anna share in equal shares, according to the following rules":— Clause 4 was as follows :—"If there should be any dispute or disagreement between my two wives, or if there being any disagreement between either or both of them and the executors abovenamed, she or they live in my family dwelling-house, or according to the rules of Hindu religion in some holy place, maintaining a good character, then each of them shall receive a monthly allowance of Rs. 10 for maintenance, but if otherwise, she shall be entirely deprived of her right." Clause 9 provided that no person of the family of the fathers of his two wives should be able to exercise any control over the money and property left by the testator. Clause 5 provided for the education of the testator's sister's son. The gift over was to the effect that anyone acting contrary to the terms of the will should be deprived of his interest which should, in due course, devolve on the other heirs. It was found on the evidence that forfeiture under cl. 4 of the will had been incurred by the defendant *B*, the younger widow of the testator, by reason of her having broken the condition relating to residence:—*Held*, that s. 82 of the Indian Succession Act (X of 1865), which enacts that "where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him," applied to the case:—*Held*, also that the will gave only a restricted interest to the widows, and that cl. 2 of the will should be construed as giving to the widows as joint tenants a life-interest in a twelve-anna share of the estate with the right of survivorship. The clause in the will as to residence was valid and binding:—*Held*, further, that the plaintiff, the son of testator's sister, who was in existence at the date of the testator's death, and who was the next reversionary heir after his widows, was entitled to take under the gift over, and not the heirs to the *stridhana* of *P*, the elder widow of the testator. BHOBA TARINI DEBYA *v.* PEARY LALL SANYAL.

[24 Calc. 646

14.—*Construction of right of transfer exercised by one of two legatees of property bequeathed equally to each—Alienation of share by widow—Severance of joint tenancy.*] Where a Hindu testator bequeathed a 4-anna share of a zemindari to his youngest widow and her son, "for your maintenance," with power to them to alienate by sale or gift the property bequeathed:—*Held*, that on the true construction of such gift each of the two legatees took an absolute interest in a 2-anna share of his estate, and the words *for your maintenance* did not reduce the interest of either legatee to one for life only:—*Held*, also, that the widow's conveyance of her share operated as a severance of the joint tenancy which had been created by the will between her and her son, and was effectual without her son's consent.

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

Vydinada v. *Nagammal*, I. L. R. 11 Mad. 258, overruled. JOGESWAR NARAIN DEO *v.* RAM CHANDRA DUTT.

[23 Calc. 670
[L. R. 23 I. A. 37

15.—*Principles of construction of operative words in wills and documents—Effect of context upon technical, or clearly disposing, words used—Dispositions in accordance with the law of inheritance—"Putra putrade krame"—Malik.*] There are two cardinal principles in the construction of wills, deeds, and other documents. The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. The second is that technical words, or words of known legal import, must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not use the technical terms in their proper sense. *Doe d. Gallini* v. *Gallini*, 5 B. & Ad. 621, referred to and followed. In a Hindu will an heritable and alienable estate is to be understood by the use of the words "shall become *malik*," unless the context indicates a different intention. The words *putra putrade krame* have acquired a technical force, and are used as meaning an estate of inheritance. That a testator may have imperfectly understood the words which he has used, or the effects of conferring an hereditary estate, would not justify the giving an interpretation to his words other than their legal meaning. A will contained the following in favour of the testator's sister's son, *viz.*, that he "becoming my *sthulabishikto* (substitute) and becoming *malik* of all my estate and properties shall . . . enjoy, with son, grandson and so on, in succession (*putra putrade krame*) the proceeds of my estate." Provisions followed for the maintenance of this nephew's widow, and of his daughter, should he die; and a gift over that, "in the absence of the said nephew's son, grandson, great-grandson, and so on, then of the sons born of my sisters . . the eldest, with son, grandson and so on in succession, shall" receive the ownership. On a claim by the nearest *gotraja-sapindas* of the testator against the nephew for the construction of the will:—*Held*, that on the true construction of the entire will, the *primâ facie* legal meaning of the disposing words used was not controlled by the context, so as to establish any contrary meaning by making it clear that the words were not used in their proper sense; that there was no intention expressed to give a succession of life estates to the nephew and his male issue only—a disposition which would not have accorded with Hindu law; but that an alienable and heritable estate was devised to him. Specified property was given by the will in trust for the income to be expended for religious and charitable purposes, with an express prohibition of alienation of this property. There was also a gift of the testator's estates to Government for charitable purposes in the event of no one entitled to be the testator's *sthulabi-*

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

shikto remaining alive. If expressed as to the heritable estate in which the beneficial interest accompanied the gift, the prohibition of alienation would have been merely void, without any effect upon the disposition of that estate. Made, however, as to property given for religious and charitable purposes, it was valid by Hindu law. No decision as to the effect of the gift over of the secular heritable estate was required, inasmuch as the contingency upon which it was limited to go over had not occurred, and might not occur. LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY; BEPIN MOHUN SINGH ROY *v.* CHUKKUN LAL ROY; PRIAMBADA ROY *v.* CHUKKUN LAL ROY.

[24 Calc. 834
[L. R. 24 I. A. 76

16.—*Absolute estate—Gift to daughter—Daughters' estate.*] A Hindu by will bequeathed to his daughters his separate property to be enjoyed by them "as they pleased":—*Held*, that the daughters took an absolute estate. KAMARAZU *v.* VENKATARATNAM.

[20 Mad. 293

17.—*Absolute gift on condition—Bequest to daughters—Meaning of the words "have issue."*] The testator, after providing that his two daughters should after their marriage remain in his family, taking the income of his property without dividing it, and that, if they should disagree, the income only should be shared between them, added the following:—"If both the said daughters shall have issue, they shall divide the said properties equally. Those who have no issue shall, as aforesaid, enjoy the income for their lives, and those who have issue shall enjoy the whole property":—*Held*, to be the applicable principle that where the language of a will is clear and consistent, it shall receive its literal construction unless there is something in the will itself to suggest a departure from it. Accordingly, the true construction was that the birth of issue was the event on which the absolute gift of a half share to either daughter was to take effect; and that there was no reason for construing the words "have issue" to mean "leave issue." Therefore, under the will, one of the daughters, whose only issue died before her, took a heritable share, and that share did not go over, on her death, to her surviving sister who had children. GURUSAMI PILLAI *v.* SIVAKAMI AMMAL.

[18 Mad. 347
[L. R. 22 I. A. 119

18.—*Gift to sons—Life-estate—Gift of residue—Meaning of words "have issue sons."*] A Hindu died leaving a widow (*N*) and two sons (Damodar and Dayabhai), and a grandson *K*, the son of Dayabhai. Damodar had had two sons born to him in the testator's lifetime, but both had died in infancy and before the date of the will. This fact was not known at the hearing of the suit or of the appeal to any of the Counsel appearing in the case, and was only disclosed after the first

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

judgment of the Appeal Court had been delivered. By his will, dated 1885, the testator disposed of certain dwelling-houses which belonged to him and of the residue of his estate as follows:—8. "I have given the houses to my wife *N* for her to enjoy the income thereof. . . . In the event of the decease of my wife *N*, my sons Damodar and Dayabhai may take in equal shares, half and half, the income that may be received, and may enjoy and may expend and may make donations for religious and charitable purposes, and the heirs also of both these my sons may always take the income from time to time, and may divide and take the income. To the same no one has any claim or title." 13. "Afterwards giving to all what is written in this will, all the residue of the estate (*iskamat*), the whole of it should be divided and taken in equal shares by my sons Damodardas and Dayabhai . . . . . And on the death of the two sons (*kaza razae*), he who may have issue sons that issue is in every way the heir of his father's property, and if in the lifetime of the two above-mentioned sons one should not have issue sons, then, on his death, if my other son should be alive, he should get all the estate, cash and whatever else there may be, in that no son can raise a dispute . . . . . As to the rest, whichever son of mine may survive (*hayatimo hoe*) should get all that is given by me, and should there be no survivorship of that child, and should he have a son or sons, then he (or they) should get all, according to what is written above; in that no one can raise an objection":—*Held* (confirming CANDY, J.), that, under cl. 8, Damodar and Dayabhai took only a life-interest in the house as tenants-in-common, and that the ulterior interest therein not being validly disposed of fell into the residue:—*Held*, also (varying the decree of CANDY, J.), that Damodar and Dayabhai each took a life-estate in a moiety of the residuary estate, and that if Damodar died without leaving a son, his moiety would devolve upon Dayabhai, or, if he were dead, upon his son *K* (if then living), and if Dayabhai should die without leaving a son, his moiety would devolve upon Damodar if then living. DAMODARDAS TAPIDAS *v.* DAYABHAI TAPIDAS.

[21 Bom. 1

19.—*Gift of residue of income of property "to be used for the purposes of A and B as trustees think proper"—Gift to future children of testator's daughter—Power of appointment by will given to daughter in case no children born.*] A Hindu inhabitant of Bombay, by his will, directed that his immoveable property in Bombay should be formed into a trust, of which he appointed certain trustees. Out of the net income of the trust, the trustees were to pay Rs. 50 to his wife and his daughter *M* for their personal expenses, and the residue was "to be used for the purposes of my wife and my daughter *M* and her children in such manner as my trustees think proper." *M* was thirty years of age at the hearing of the suit, and had no children:—*Held*, that this was a gift of the residue of the net rents in equal shares

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

to the wife and *M*, and that the survivor of them would be entitled during her life to the entirety of the said rents. The testator further directed that after *M's* death the trust was to stand valid during the lifetime of her children (if any), and that afterwards the heirs of such children should divide and receive the property. But, if *M* had no children, then, after the death of the wife and *M*, the trust should become void, and the property was to be delivered to such person as *M* might, by will, appoint:—*Held* (1) that the provision for the future children (if any) of *M* failed under the ruling in the *Tagore case*, 9 B. L. R. 377; L. R. I. A. Sup. Vol. 47. If any children should be born, the question would arise as to what would become of the property; (2) that the direction that the property should be delivered to such person as *M* should by will appoint, was a valid direction, subject, however, to the limitation that the person to whom *M* appointed should be a person in existence at the death of the testator. BAI MOTIVAHU *v.* BAI MAMUBAI.

[19 Bom. 647

In the same case on appeal to the Privy Council *held*, that even if Hindu wills are not to be regarded, in all respects, as gifts to take effect upon the death of the testator, they are generally to be regarded, as to the property which they can transfer and as to the persons to whom transfer can be made, as regulated by the Hindu law of gift. The *Tagore case*, 9 B. L. R. 377; L. R. I. A. Sup. Vol. 47, referred to and followed. A Hindu testator devised his immoveable property upon trust for the income to be appropriated to the maintenance of his widow and of his daughter, and of the children that might be born of her, the property to be divided among the heirs of such children. If there should not be any children born of his daughter, the property under the will should devolve upon those "to whom she might direct it to be delivered by making her will." The daughter having had no children, and questions having arisen between the daughter and the widow as to the administration of the estate according to the will:—*Held*, that there was not an absolute gift to the daughter, and that the persons to whom the property was given, though to be designated by her, did not take the gift from her, but from the testator. The judgment in *Hixon* v. *Oliver*, 13 Ves. 108, was not applicable. According to the already settled law, if the testator himself had designated the persons to take in the event of his daughter having no child, the gift would have been valid as an executory bequest, supported by preceding life-interests, but valid only under the following restriction, *viz.*, that to render the gift valid, the taker so designated must have been, either actually or in contemplation of law, in existence at the death of the testator. In this case, no principle of Hindu law stood in the way to prevent the testator from substituting his daughter for himself as the person empowered to designate; but the same limitation held good as to the existence being requisite of the donee at the end of the

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

donor's life, in order that the power might be validly exercised. There was no application of the English law of "powers," which was not fit to be applied generally to Hindu wills. Subject to the above restriction, the power in question was valid. It was not decided upon whom the property would devolve, if the power should not be exercised. BAI MOTIVAHU *v.* BAI MAMUBAI.

[21 Bom. 709
[L. R. 24 I. A. 73

20.—*Succession Act* (*X of* 1865), *ss.* 101, 102 *and* 159—*Power of disposition of moveable property—Effect of subsequent void gift—Gift of balance of rents of immoveable property, in hands of trustees—Evidence of intention to limit duration of enjoyment of bequest—Gift by implication, What is necessary to constitute—Estates according to Hindu law in ancestral property, Presumption as to—Effect of assent to provision of will by son of Hindu testator, where there is doubt whether property is ancestral or self-acquired.*] Where it is doubtful whether the property with which the will of a deceased Hindu purports to deal is ancestral or self-acquired, the assent of his only son to the provisions of the will, some of which are favourable and some unfavourable to his interest and that of his sons, will bind the latter as well as himself. A direction in the will of a Hindu to the following effect—"my remaining moveable property shall be dealt with by my son *G* according as he may think proper; and when the sons of my son *G* shall attain the age of twenty-one years, the same shall be divided and duly received by *G* and his sons in equal shares" confers an absolute gift on *G*. If the gift over to *G's* sons, on their attaining the age of twenty-one years, were valid, the absolute estate of *G* would be liable to be divested on a son or sons of *G* attaining the age of twenty-one years, and asking for a division; but that gift being clearly void under ss. 101 and 102 of the Succession Act (X of 1865), its insertion has no effect on the words of absolute gift preceding it. A direction in the will of a Hindu that immoveable property should be retained in the hands of trustees appointed by the will, and that the balance of the rents, profits, &c., after the payment of expenses, should be used and enjoyed by the testator's son *G* in such manner as he might think fit, with a provision empowering the sons of such son to call him to account for the management of the property on attaining the age of twenty-one, and with a direct, though void, gift over to the grandsons of such son, confers only a life estate on the son *G*,—the vesting the property in trustees, the right of *G's* sons to ask for an account, and the gift over to *G's* grandsons all showing an intention on the testator's part that the enjoyment of the bequest should be of limited duration within the meaning of s. 159 of the Succession Act (X of 1865). To constitute a gift by implication in a will, there must be a reasonable degree of certainty as to the persons intended to take and the nature of

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

the estates which they are intended to take. A direction that until the son or sons of the tenant for life of immoveable property should attain a certain age, no person on behalf of such son or sons should ask the tenant for life for an account or raise any objection, does not sufficiently define the persons to take or the estates in which they are to take to constitute a gift by implication. It would be difficult, if not impossible, for a Hindu to create by express terms the estates which arise by virtue of the doctrine of Hindu law in regard to the rights of male issue in ancestral property; and even where the hypothesis that the testator intended (under a misapprehension of the law) to create such estates affords a key to the will and gives an adequate explanation of the various estates which would have to be implied in order to give full effect to the different directions contained in the will, yet if the estates cannot be implied from the words used in the will, the Court cannot create such estates for the testator by implication, since to do so would be to construct a will for him based upon his supposed intention, not on the words which he has used. ANANDRAO VINAYAK *v.* ADMINISTRATOR-GENERAL OF BOMBAY.

[20 Bom. 450

21.—*Gift to a class—One member of such class in existence of date of gift—Will directing deed to be executed—Date of deed is date of gift.*] A Hindu died in 1856 leaving a will whereby he directed his widow and executrix *L* to purchase an estate worth Rs. 20,000 for his grandson *T*, and that this estate should be conveyed to trustees, to be held by them in trust for *T* for his life or until his insolvency, and after his death for his son or other male heir. The executrix purchased the estate, but no trust-deed was executed. *T* therefore brought a suit in 1871 to have the will carried out and a trust-deed executed. *T R* (one of the plaintiffs in the present suit), who was *T's* uncle, was made a party to that suit, and a consent decree was passed which ordered that the executrix *L* and *T R* should execute a trust-deed in accordance with the directions in the will. A deed was accordingly executed in 1876 whereby the property was conveyed to trustees on the trusts declared in the will. At the time of the testator's death, *T* had no sons, but, at the date of the deed in 1876, he had one son *C*, and in 1883 another son *G* (the defendant) was born to him. *T* died in 1890; *C* died childless in 1891. The plaintiffs, who were *T R*, the son, and *T R's* son, the grandson, of the testator, now claimed the property. They contended that as neither of *T's* sons were in existence at the date of the testator's death, they could not take under his will or under the deed which was afterwards executed to carry out the will; that although at the date of the deed in 1876 one of the sons (*C*) was in existence, nevertheless he could only claim as one of a class, and that class was not ascertained or ascertainable at the date of the testator's death, nor at the date of the deed, *G* not having been born until 1883.

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION OF WILLS—*continued.*

The whole class was therefore excluded, and the property, after *T's* death, was undisposed of:—*Held*, that in view of the direction of the will that a deed was to be executed which should declare the trusts of the property, it was the date of the deed subsequently executed which should be regarded in order to determine the validity of the limitations of the property bequeathed, and not the date of the testator's death, and that, under the deed, on the death of *T*, his son *C* became entitled to the property. In the case of a gift to a class, if there is a person in existence at the time of the gift capable of taking, and whom undoubtedly the donor intends to benefit, he is entitled to take, although others of the same class subsequently come into existence whom the donor meant the gift also to benefit, but who cannot take because of their non-existence at the date of the gift. TRIBHUVANDAS RUTTONJI *v.* GANGADAS TRICUMJI.

[18 Bom. 7

22.—*Bequest to "children"—Meaning of the expression "children"—Gift to a class—Gift of income as required with trust for accumulation of balance.*] Considerations which only show that a testator has made a disposition in his will which the Court is surprised to find there, though they might have determined the sense in which the testator had used an ambiguous expression, cannot of themselves lead the Court to refuse to give effect to the plain language he has employed, *e.g.*, to read a bequest to "children" as a bequest to "sons" only. A bequest to "the children of *R*, living at his decease," where some such children are in existence at the date of the will, need not be construed as a gift to a class of which some members might come into existence after the testator's death, when such a construction would manifestly defeat the primary object of the testator. A direction in a will to trustees to pay to a Hindu lady so much of certain dividends as she might from time to time require for her own use and support, &c., and to accumulate the surplus not required by her upon trusts, entitles the legatee to receive, if she requires it, the whole interest as it falls due, but not to claim afterwards amounts which she did not require as they fell due, and which have been accumulated, and this is so whether the trust for which accumulation is directed is valid or invalid. KRISHNARAO RAMCHANDRA *v.* BENABAI.

[20 Bom. 571

23.—*Maintenance—Right of daughter to maintenance after her marriage—Married daughter in good circumstances—Trust for maintenance.*] A Hindu testator, after making the Administrator-General of Bengal executor and trustee of his will, and giving his daughter an annuity of Rs. 5 a month for her life, provided for the payment to *G C B*, whom he constituted the guardian of his daughter and of his only son during their minority, of the sum of Rs. 225 "monthly and every month for the maintenance and education of my said son and the support of my said

HINDU LAW—WILL—*concluded.*

(2) CONSTRUCTION OF WILLS—*concluded.*

daughter and such other persons as live in my house and are supported at my expense," and further provided that all "the residue of my estate, moveable and immoveable, with all accumulations and additions" should be conveyed to his son on his attaining majority, "subject nevertheless to the trust of maintaining my said daughter." The daughter had married a man of means and did not need any maintenance:—*Held*, in a suit by the daughter for a construction of the will and for a specific sum to be set apart for her maintenance, that the plaintiff was not entitled to anything by way of a separate allowance for maintenance; she was only entitled under the will (apart from her annuity of Rs. 5 a month) to be provided for in case she were otherwise unprovided for. Where the construction of a will was not so difficult as to have required the assistance of the Court, it was *held* to be not a case where the estate should bear the costs. The suit was therefore dismissed with costs. NARAYANI DASI *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[21 Calc. 683

HINDU WIDOW.

See HINDU LAW—WIDOW.

See LIMITATION ACT, ART, 141.

[18 Bom. 216

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[19 All. 324

——, Alienation by.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[21 Bom. 749

See LIMITATION ACT, ART. 125, ON LAND.

[19 All. 524

——, Debt of.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY.

[19 All. 300

See MONEY PAID FOR BENEFIT OF ANOTHER.

[18 All. 471

——, Gift to.

See HINDU LAW—REVERSIONERS—ARRANGEMENT BETWEEN WIDOW AND REVERSIONERS.

[22 Calc. 354

——, Legal representative of.

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

[23 Calc. 636

HINDU WIDOW—*concluded.*

——, Relinquishment by.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[23 Calc. 454

See HINDU LAW—REVERSIONERS—ARRANGEMENT BETWEEN WIDOW AND REVERSIONERS.

[22 Calc. 354

——, Sale of share of.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[22 Calc. 641

——, Suit to set aside alienation by.

See VALUATION OF SUIT—SUITS.

[18 Mad. 459

HINDU WILLS ACT (XXI OF 1870).

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE.

[18 Bom. 608

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[23 Calc. 563
[L. R. 23 I. A. 18
[24 Calc. 646

See PROBATE—EFFECT OF PROBATE.

[18 All. 260

——, s. 2.

See WILL—ATTESTATION.

[20 Bom. 674

——, s. 5.

See ADMINISTRATOR-GENERAL'S ACT, S. 31.

[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

HOLIDAY.

See CIVIL PROCEDURE CODE, S. 307.

[20 Bom. 745

See LIMITATION ACT, S. 4.

[20 Mad. 469

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.

[22 Calc. 176

"HOMESTEAD," MEANING OF.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDING AND HOUSE MATERIALS.

[21 Bom. 588

HOROSCOPE.

See EVIDENCE ACT, SS. 17 AND 18.

[17 Mad. 134

HOUSEBREAKING BY NIGHT.

See CRIMINAL TRESPASS.

[22 Calc. 994

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

[17 All. 120

HOUSE TRESPASS.

See CRIMINAL TRESPASS.

[22 Calc. 123, 391
[19 All. 74

HUNDI.

See EVIDENCE—CIVIL CASES—ACCOUNT AND ACCOUNT BOOKS.

[16 All. 157
[L. R. 21 I. A. 6

See FRAUD—EFFECT OF FRAUD.

[24 Calc. 533

——, Dishonour of.

See BOND.

[20 Bom. 791

——, Execution of.

See STAMP ACT, S. 16.

[19 Bom. 635

——, Endorsement of, by debtor.

See LIMITATION ACT, S. 20.

[19 All. 307

——, Suit on.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 369

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[22 Calc. 451
[20 Bom. 133

See LIMITATION ACT, S. 14.

[20 Bom. 133

See STAMP ACT, S. 34.

[18 Bom. 369

1.—*Shah jog hundi endorsed to a particular person—Stolen hundi—Payment by drawee without inquiry to wrong person—Liability of drawee to lawful owner of hundi—Conversion—Trover.*] On the 8th December, 1893, the plaintiff at Sholapur having bought a *shah jog hundi*, there drawn upon the defendants in Bombay, endorsed it to *R*. and sent it by post to him for collection. In course of its transmission, it was stolen, and the name of

R was expunged, and another name, *viz.*, that of *D*, was substituted. On the 9th December, 1893, the *hundi* was presented for payment to the defendants in Bombay by a person giving his name as *D*, and the defendants paid it without inquiry as to the responsibility or position of the person to whom they paid it. The plaintiff sued the defendants for the value of the *hundi*:—*Held* (1) that the defendants were guilty of conversion of the *hundi*, and were liable to the plaintiff, the lawful owner thereof, in trover; (2) that the *hundi* continued to be *shah jog* after being indorsed to a particular person. GANESDAS RAMNARAYAN *v.* LACHMINARAYAN.

[18 Bom. 570

2.—*Hundi payable at fixed date—Dishonour by non-acceptance—Cause of action—Right of suit—Negotiable Instruments Act (XXVI of 1881).*] On the 14th April, 1889, the defendant, at Gwalior, drew a *hundi* for Rs. 2,500 on his firm at Bombay in favour of *D* payable forty-five days after date. It was subsequently indorsed at Gwalior by *D* to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June, 1889, but, on the 23rd April, 1889, the bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. In a suit brought on the *hundi*, the defendant contended that the *hundi* being payable at a fixed date, and not having been presented for payment when due, no cause of action had arisen to the plaintiff:—*Held* (1) that dishonour by non-acceptance of a *hundi* payable at a fixed date gives an immediate cause of action against the drawer, and there is no need to wait until the maturity of the *hundi* or to present it for payment; (2) that, under the Negotiable Instruments Act (XXVI of 1881), the dishonour of a *hundi* by non-acceptance constitutes now, as it has always done, part of the cause of action in a suit against the drawer. RAM RAVJI JAMBHEKAR *v.* PRALHADDAS SUBKARN.

[20 Bom. 133

3.—*Hundi drawn by a manager of Hindu family—Liability of member of family—Notice of dishonour to the drawer—Negotiable Instruments Act (XXVI of 1881), s. 30.*] The Negotiable Instruments Act (XXVI of 1881), in the absence of local usage to the contrary, applies to *hundis*. A member of a Hindu family whom it is sought to make liable by a suit on a *hundi* drawn by the manager of the family is entitled to urge that no notice of dishonour had been given to the manager (drawer) so as to make the latter liable under s. 30 of the Negotiable Instruments Act. KRISHNASHET *v.* HARI VALJI BHATYE.

[20 Bom. 488

4.—*Suit by holder and indorsee against payee and indorser—Local usage as to presentment—Usage of presentment at Bushire—Negotiable Instruments Act (XXVI of 1881), ss. 70, 71, 75 and 137.*] The plaintiff as holder and indorsee of a *hundi* drawn on one *H* of Bushire sued defendant

HUNDI—*concluded.*

as payee and indorser to recover Rs. 1,193-4-0 on a *hundi* which had been dishonoured by the acceptor. It was found by the Court (1) that the local usage at Bushire was to present the *hundi* for payment at the bank, and for the acceptor to call at the bank at due date and effect settlement; (2) that the *hundi* in question was presented for payment to the authorized agent of the acceptor at the bank on the due date; (3) that the said agent refused payment and informed the bank that the acceptor would not pay the *hundi*. It was argued that presentment at the bank was not good presentment having regard to ss. 70, 71 and 137 of the Negotiable Instruments Act (XXVI of 1881):—*Held*, that the local usage made the presentment a good presentment. IMPERIAL BANK OF PERSIA *v.* FATTECHAND KHUBCHAND.

[21 Bom. 294

HURT.

See GRIEVOUS HURT.

[19 Bom. 247

HUSBAND AND WIFE.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[18 Bom. 327

See DIVORCE ACT, S. 35.

[19 Bom. 293
[23 Calc. 912, 916 note
[25 Calc. 222

See GUARDIAN—APPOINTMENT.

[18 Bom. 366

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 Bom. 316

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[17 Mad. 260
[22 Calc. 291
[24 Calc. 638

See PARSI MARRIAGE AND DIVORCE ACT, S. 30.

[18 Bom. 366

See RES JUDICATA—CAUSE OF ACTION.

[18 Bom. 327

See RESTITUTION OF CONJUGAL RIGHTS.

[21 Bom. 610

See SUCCESSION ACT, S. 4.

[23 Calc. 506

See THEFT.

[17 Mad. 401

See WITNESS — CIVIL CASES—PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

[18 Bom. 468

HUSBAND AND WIFE—*concluded.*

—*Divorce—Suit for nullity of marriage—Suit by wife against husband—Costs of wife—Alimony—Maintenance—Suit between Mahomedans—Mahomedan law.*] The English law which makes the husband in divorce proceedings liable *primâ facie* to the wife's costs, except when she is possessed of sufficient separate property, does not apply to divorce proceedings between Mahomedans. A wife sued her husband for dissolution of marriage (both parties being Mahomedans) on the ground of his impotency and malformation. An interlocutory order was made by the Court adjourning the further hearing of the suit for one year, in order that the parties might resume cohabitation for that period. The husband desired to carry out the order of the Court and was anxious that his wife should live with him; she, however, refused to do so, and only paid occasional visits to his house. The suit was subsequently dismissed with costs. The wife appealed, and subsequently applied for alimony until the disposal of the appeal:—*Held* that, having regard to the conduct of the wife, she was not entitled to alimony. By Mahomedan law a husband's duty to maintain his wife is conditional upon her obedience, and he is not bound to maintain her if she disobeys him by refusing to live with him or otherwise. A. *v.* B.

[21 Bom. 77

IDOL.

See PLAINT—AMENDMENT OF PLAINT.

[19 All. 330

——, Position of.

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[23 Calc. 536

——, Right to offerings made to.

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[23 Calc. 645

See LIMITATION ACT, ART. 116.

[23 Calc. 645

ILLEGAL GRATIFICATION.

—*Penal Code (Act XIV of 1860), s. 161—Public servant—Revenue and police patel—Agreement to restore village Mahars to office on payment of Rs. 300 towards repair of a village temple—Official Act.*] The *Mahars* of a certain village having been suspended from their office for some months, a meeting of the villagers was held at the house of the *Patel*, at which the *Patel* was present to consider the question of their restoration to office, and an agreement was there come to that they should be restored on their paying a sum of Rs. 300 towards the repair of the village temple:—*Held*, that the *Patel*, being a public servant, had committed an offence under s. 161 of the Penal Code. QUEEN-EMPRESS *v.* APPAJI BIN YADAVRAO.

[21 Bom. 517

ILLEGITIMACY.

See MAHOMEDAN LAW—ACKNOWLEDGMENT.

[21 Calc. 666

See WITNESS — CIVIL CASES—PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

[18 Bom. 468

ILLEGITIMATE CHILDREN.

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS —MANAGER.

[18 Bom. 177

See HINDU LAW — MAINTENANCE — RIGHTS TO MAINTENANCE - ILLEGITIMATE CHILDREN.

[17 Mad. 160
[18 All. 253

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[18 Bom. 468
[19 Mad. 461

See MORTGAGE—REDEMPTION — RIGHT OF REDEMPTION.

[18 All. 253

IMMOVEABLE PROPERTY.

See ATTACHMENT — ATTACHMENT BEFORE JUDGMENT.

[16 All. 186

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[21 Bom. 226

See ATTACHMENT — SUBJECTS OF ATTACHMENT — EQUITY OF REDEMPTION.

[21 Bom. 226

See CRIMINAL BREACH OF TRUST.

[23 Calc. 372

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 22,

[18 Bom. 739

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[24 Calc. 449

See CASES UNDER LIMITATION ACT, ART. 144—IMMOVEABLE PROPERTY.

[19 Bom. 207

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH THE MAGISTRATE MAY DECIDE AS TO POSSESSION.

[23 Calc. 80

See REGISTRATION ACT, s. 17.

[18 Bom. 92
[20 Bom. 704
[21 Bom. 533

IMMOVEABLE PROPERTY—*concluded.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—IMMOVEABLE PROPERTY.

[21 Bom. 387

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—IMMOVEABLE PROPERTY.

[19 Mad. 103, 329

See TRANSFER OF PROPERTY ACT, s. 107.

[22 Calc. 752

——, Contract for sale of.

See REGISTRATION ACT, s. 17.

[18 Bom. 13

——, Delivery of possession of.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[22 Calc. 179
[17 Mad. 146

——, Execution of decree for.

See LIMITATION ACT, ART. 178.

[16 All. 237

——, Interest in.

See CASES UNDER LIMITATION ACT, ART. 144—IMMOVEABLE PROPERTY.

See REGISTRATION ACT, s. 17.

[20 Mad. 58
[21 Bom. 387

——, Payment charged on.

See LIMITATION ACT, ART. 132.

[16 All. 189

——, Suit for.

See COURT-FEES ACT, s. 17.

[16 All. 401

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION — RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

IMPARTIBLE PROPERTY.

See GHATWALI TENURE.

[22 Calc. 156

See GRANT—CONSTRUCTION OF GRANTS.

[17 Mad. 150

See HINDU LAW — CUSTOM — IMPARTIBILITY.

[18 Mad. 287
[19 All. 1
[L. R. 23 I. A. 147

IMPARTIBLE PROPERTY—*concluded.*

See CASES UNDER HINDU LAW—INHERITANCE — IMPARTIBLE PROPERTY.

See HINDU LAW — MAINTENANCE — RIGHT TO MAINTENANCE—GENERAL CASES.
[20 Bom. 181

See HINDU LAW—PARTITION—PARTITION OF PORTION OF PROPERTY.
[17 Mad. 362

See HINDU LAW — PARTITION—REQUISITES FOR PARTITION.
[20 Mad. 256

See HINDU LAW—WILL—POWER OF DISPOSITION.
[20 Mad. 167

IMPRISONMENT.

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 49.
[18 Bom. 400

See CATTLE TRESPASS ACT, s. 22.
[22 Calc. 139
[19 Mad. 238

See COMPENSATION—CRIMINAL CASES—COMPENSATION FOR LOSS OR INJURY CAUSED BY OFFENCE.
[22 Calc. 139
[19 Mad. 238

See COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.
[21 Calc. 979
[22 Calc. 586
[18 All. 96
[19 All. 73

See CONTEMPT OF COURT—GENERAL CASES.
[19 Bom. 152

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[17 All. 156

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.
[22 Calc. 291
[20 Mad. 3

See RAILWAYS ACT, s. 113.
[18 Bom. 440
[20 Mad. 385

See CASES UNDER SENTENCE — IMPRISONMENT.

See SESSIONS JUDGE, JURISDICTION OF.
[18 Bom. 751
[18 All. 301

IMPROVEMENT.

See INVENTIONS AND DESIGNS ACT.
[17 All. 490

IMPROVEMENTS.

See DECREE—FORM OF DECREE—MORTGAGE.
[20 Mad. 120

See CASES UNDER LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

——, Money expended in.

See MALABAR LAW—MORTGAGE.
[20 Mad. 124

See MORTGAGE—ACCOUNTS.
[20 Mad. 124

INAM.

See GRANT—CONSTRUCTION OF GRANTS.
[18 Mad. 257

INAM LAND.

See BOMBAY LAND REVENUE ACT, s. 216.
[18 Bom. 525

See BOMBAY REVENUE JURISDICTION ACT, s. 4.
[18 Bom. 319

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.
[18 Bom. 525

See PARTITION—RIGHT TO PARTITION.
[21 Bom. 458

——, Enfranchisement of.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT.
[20 Mad 454

INAMDAR, RIGHT OF.

See LANDLORD AND TENANT—EJECTMENT—GENERALLY.
[19 Bom. 138

INCOME-TAX RETURNS.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.
[23 Calc. 950

INCUMBRANCE.

See BENGAL TENANCY ACT, s. 65.
[21 Calc. 722

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.
[22 Calc. 244

INDIAN COUNCILS ACT (24 AND 25 VICT. CAP. 67).

——, s. 22.

See FOREIGNERS.

[18 Bom. 636

INDIGO PLANTER.

See INSOLVENT ACT, s. 60.

[21 Calc. 1018

INDORSEMENT.

——, Absence of.

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

[17 Mad. 461

——, Effect of.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[22 Calc. 451

See LIMITATION ACT, s. 20.

[19 All. 307

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

[17 Mad. 197

——, Forged.

See HUNDI.

[18 Bom. 576

INFORMATION OF COMMISSION OF OFFENCE.

See ACCOMPLICE.

[21 Calc. 328

INHERITANCE.

See CONVERTS.

[20 Bom. 53, 181

See HINDU LAW — CUSTOM — INHERITANCE.

[21 Bom. 110

See CASES UNDER HINDU LAW—INHERITANCE.

See MAHOMEDAN LAW—CUSTOM.

[21 Calc. 149

See MALABAR LAW—INHERITANCE.

[19 Mad. 1

See MALABAR LAW—PARTITION.

[17 Mad. 184

See SUCCESSION ACT, s. 331.

[19 Bom. 783

——, Question of.

See OUDE ESTATES ACT, s. 22.

[21 Calc. 997

See PRIVY COUNCIL, PRACTICE OF — REVIVOR OF APPEAL.

[21 Calc. 997

INJUNCTION. *Col.*

1. Under Civil Procedure Code ... 554
2. Special Cases ... 555
   (*a*) Breach of Agreement ... 555
   (*b*) Execution of Decree ... 556
   (*c*) Injury or Obstruction to Rights of Property ... 557
   (*d*) Intrusion on Office ... 558

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 42.

[19 Bom. 212

See COSTS—SPECIAL CASES—PAYMENT INTO COURT.

[21 Bom. 502

See COSTS—SPECIAL CASES—SUIT OR APPEAL ONLY PARTLY DECREED.

[18 Bom. 474

See EASEMENT.

[18 Bom. 616

See JURISDICTION OF CIVIL COURT—CASTE.

[20 Bom. 784

See JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF.

[18 Mad. 163

See LIMITATION Act, s. 10.

[20 Mad. 398

See MAMLATDARS COURTS ACT, s. 4.

[18 Bom. 46

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR.

[18 Bom. 474

See REGISTRATION ACT, s. 17.

[20 Mad. 58

See RIGHT OF SUIT—PRIVACY, INVASION OF.

[18 Mad. 163

See TRADE-MARK.

[24 Calc. 364

See VALUATION OF SUIT—APPEALS.

[18 Bom. 100, 207

—— staying execution.

See LIMITATION ACT, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.

[17 All. 425

(1) UNDER CIVIL PROCEDURE CODE.

1.—*Temporary injunction—Civil Procedure Code* (1882), *ss.* 492 *and* 503—*Appointment of receiver.*] The distinction between a case in which a temporary injunction may be granted and a case in which a receiver may be appointed, is that, while in either case, it must be shown that the property should be preserved from waste or alienation, in the former case, it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged; while, in the latter case, a *good primâ*

INJUNCTION—*continued.*

(1) UNDER CIVIL PROCEDURE CODE—*concld.*

facie title has to be made out. *Sidheswari Dabi* v. *Abhoyeswari Dabi*, I. L. R. 15 Calc. 818, approved. An order of the lower Court for appointment of a receiver under s. 503 of the Civil Procedure Code (Act XIV of 1882) was set aside, and an order for a temporary injunction, under s. 492 of the Code, granted. CHANDIDAT JHA *v.* PADMANAND SINGH.

[22 Calc. 459

(2) SPECIAL CASES.

(*a*) BREACH OF AGREEMENT.

2.—*Agreement not to work for a rival tradesman—Specific Relief Act (I of 1877), ss. 22, 54 and 57—Agreement made when under criminal charge—Discretion of Court in granting specific performance—Negative agreement—Damages—Form of decree.*] The plaintiff was a milliner carrying on business in Bombay, and the defendant was in his employment up to the year 1890. In that year he left the plaintiff's service, and the plaintiff alleged that at the time he left it, he was indebted to the plaintiff for moneys not accounted for and also in respect of loans made to him. The plaintiff instituted criminal proceedings in the Police Court against the defendant for criminal breach of trust, and procured a warrant for his arrest. The defendant surrendered, and at the time of the agreement hereafter mentioned the proceedings in this matter were going on. The defendant was out on bail, and was then in the service of a rival milliner *B*. On the 1st February, 1893, an agreement in writing was made between the plaintiff and the defendant whereby the defendant agreed as follows:—(1) to pay the plaintiff Rs. 1,950 in full settlement of the plaintiff's claim; (2) to enter plaintiff's service as cutter and to serve him for ten years from the date of agreement; (3) to serve plaintiff honestly; (4) in case plaintiff was obliged to dismiss him for some "fault," then until the expiration of the said period of ten years, the defendant should not carry on the business of a cutter or tailor, either directly or indirectly, on his own account or as partner or servant of another, and in case he should do so, the plaintiff should be at liberty to stop him. On the 15th February, 1893, the charge of criminal breach of trust against the defendant was dismissed, the plaintiff offering no evidence in support of it. The plaintiff subsequently called upon the defendant to enter his employment in accordance with the agreement, but the defendant refused, and remained in the service of *B*. The plaintiff therefore filed this suit praying for an injunction restraining the defendant from carrying on business as a cutter or tailor for ten years from the date of the agreement:—*Held*, dismissing the suit, that the parties were not really on equal terms, and that in the exercise of the discretion permitted to the Court by s. 22 of the Specific Relief Act (I of 1877) the injunction should be refused. CALLIANJI HARJIVAN *v.* NARSI TRICUM.

[18 Bom. 702

INJUNCTION—*continued.*

(2) SPECIAL CASES—*continued.*

(*a*) BREACH OF AGREEMENT—*concluded.*

Held, in the same case on appeal, that the lower Court was right in refusing either to grant specific performance of the agreement or an injunction against the defendant, but that, inasmuch as it had refused an injunction on the ground that pecuniary compensation was the plaintiff's proper remedy, it ought not to have dismissed the suit, but ought either itself to have awarded damages, or to have ordered an inquiry as to damages. The plaintiff being held to be entitled to a remedy, the appropriate remedy should be awarded. The Appellate Court accordingly passed a decree against the defendant, and awarded the plaintiff Rs. 10 as damages, with costs of the appeal. CALLIANJI HARJIVAN *v.* NARSI TRICUM.

[19 Bom. 764

(*b*) EXECUTION OF DECREE.

3.—*Application for injunction to restrain execution of decree—Specific Relief Act—Act I of 1877, s. 56—Multiplicity of proceedings.*] Certain traders having failed in business, and being indebted to the defendant under a decree of the District Court of Trichinopoly, entered into a composition with their creditors, and a deed was executed to which the defendant became a party in respect of his judgment-debt. The defendant subsequently applied for execution of this decree. The trustees, to whom the debtors' assets were made over under the deed, together with the debtors, now brought a suit in the same Court for an injunction restraining the defendant from executing or proceeding to execute his decree. The plaint was rejected by the District Judge after it had been registered and numbered, and a written statement had been filed:—*Held*, that the injunction sought for was not necessary to prevent a multiplicity of proceedings within the meaning of the Specific Relief Act, s. 56, cl. (*a*). *Semble:* The suit for the injunction prayed for was not maintainable with reference to the Specific Relief Act, s. 56, cl. (*b*). VENKATESA TAWKER *v.* RAMASAMI CHETTIAR.

[18 Mad. 338

4.—*Temporary injunction to stay sale in execution of decree—Specific Relief Act (I of 1877), ss. 53 and 56—Jurisdiction to grant temporary injunction—Civil Procedure Code (1882), ss. 492 and 311—Material irregularity in sale.*] In a proceeding for execution of a decree, pending before the District Judge, certain immoveable properties having been ordered to be sold, an application was made by a third party that property No. 1 on the sale list should be sold after the other properties on the list. The application was rejected, and the appellant brought a suit in the Court of the Subordinate Judge for a declaration that the property was not liable to be sold, and he also applied for an injunction to stay the sale of that property, which was granted by the Subordinate Judge. The District Judge, in accordance with that injunction, post-

INJUNCTION—*continued.*

(2) SPECIAL CASES—*continued.*

(*b*) EXECUTION OF DECREE—*concluded.*

poned the sale of property No. 1, and caused two other properties on the list to be sold. Objection was made under s. 311 of the Civil Procedure Code that the District Judge had acted with material irregularity in postponing the sale, inasmuch as the injunction was not binding upon him, being one not granted by a superior Court, and the Subordinate Judge having no power to grant it under s. 56 of the Specific Relief Act (I of 1877):—*Held*, that s. 56 of the Specific Relief Act (I of 1877) applies only to perpetual injunctions, temporary injunctions being left by s. 53 to be regulated by the Code of Civil Procedure, and s. 56 was not intended to affect injunctions applied for under s. 492 of the Civil Procedure Code. The temporary injunction, therefore, granted by the Subordinate Judge was not *ultra vires*; and the District Judge was bound to postpone the sale as he did, and he did not act irregularly in doing so. *Dhuronidhur Sen* v. *Agra Bank*, I. L. R. 4 Calc. 380; I. L. R. 5 Calc. 86, on review, distinguished; *Brojendro Kumar Rai Chowdhry* v. *Rup Lal Das*, I. L. R. 12 Calc. 515, referred to. AMIR DULHIN *alias* MAHAMDIJAN *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[23 Calc. 351

(*c*) INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

5.—*Joint family property—Injunction by one member of a joint Hindu family against another, when granted.*] In disputes between members of a joint Hindu family with respect of joint property, the exercise of the Court's jurisdiction to grant relief by injunction should be confined to acts of waste, illegitimate use of the family property, or acts amounting to ouster. ANANT RAMRAV *v.* GOPAL BALVANT.

[19 Bom. 269

6.—*Light and air, Infringment of right to—Easement—Specific Relief Act* (*I of* 1877), *s.* 54.] *Dhunjibhoy* v. *Lisboa Cowasji Umrigar*, I. L. R. 13 Bom. 252; and *Ghanasham Nilkant Nadkarni* v. *Moroba Ram Chandra Pai*, I. L. R. 18 Bom. 474, followed and approved, as to the circumstances in which the Court will grant an injunction where a right to light and air is infringed. SULTAN NAWAZ JUNG *v.* RUSTOMJI NANABHOY.

[20 Bom. 704

7.—*Digging so as to endanger neighbour's land—Specific Relief Act* (*I of* 1877), *s.* 54—*Threatened damage—Damage occurring after suit—Cause of action—Right of suit.*] Where an act threatening danger to a person's land is such that injury will inevitably follow, a Court may grant a perpetual injunction restraining the continuance of that act, even though no damage has actually occurred before institution of suit. And where actual injury has occurred subsequently to the filing of the plaint, the plaint may be amended so as to show the nature and extent of such injury. *Pattisson* v. *Gilford*, L. R. 18 Eq. 259, applied. BINDU BASINI CHOWDHRANI *v.* JAHNABI CHOWDHRANI.

[24 Calc. 260

8.—*Specific Relief Act* (*I of* 1877), *s.* 54—*Easement—Light and air—Injunction or damages.*] It was not intended by s. 54 of the Specific Relief Act, 1877, that a man should not have an injunction granted to him unless his property would otherwise be practically destroyed if the injunction were not granted. Where the plaintiff had for over twenty years carried on the business of manufacturing a particular kind of cloth in a certain house, and the defendant built in the neighbourhood of that house in such a manner as to render the plaintiff's house practically useless for the purposes of his manufacture, it was *held* that the plaintiff was entitled to an injunction and not merely to damages. *Aynsley* v. *Glover*, L. R. 18 Eq. 544; and *Holland* v. *Worley*, L. R. 26 Ch. D. 585, followed. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, I. L. R. 13 Bom. 252; and *Ghanasham Nilkant Nadkarni* v. *Moroba Ram Chandra Pai*, I. L. R. 18 Bom. 474, referred to. YARO *v.* SANA-ULLAH.

[19 All. 259

(*d*) INTRUSION ON OFFICE.

9.—*Purchaser of share in kulkarni vatan and joshi vritti—Obstruction in performance of duties—Specific Relief Act* (*I of* 1877), *s.* 54.] The plaintiff, who had bought a share in a *kulkarni vatan* and *joshi vritti*, was obstructed by the defendants in the performance of his duties:—*Held*, that he was entitled to an injunction against the defendants. MORO MAHADEV *v.* ANANT BHIMAJI.

[21 Bom. 821

INJUNCTION—*concluded.*

(2) SPECIAL CASES—*concluded.*

(*c*) INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY—*concluded.*

INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

See INJUNCTION — SPECIAL CASES — INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

See CASES UNDER RIGHT OF SUIT — INJURY TO ENJOYMENT OF PROPERTY.

INSANITY.

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

[22 Calc. 864

—— of judgment-debtor.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[19 Mad. 219

INSANITY—*concluded.*

1.—*Unsoundness of mind—Penal Code (Act XLV of 1860), s. 84.*] Where the unsoundness of mind deposed to was not such as would make the accused incapable of knowing the nature of the act, or that he was doing what was contrary to law, it was *held* to be insufficient to exonerate him from responsibility for crime under s. 84 of the Penal Code. QUEEN-EMPRESS *v.* RAZAI MIA.

[22 Calc. 817

2.—*Penal Code (Act XLV of 1860), s. 84—Unsoundness of mind—Legal test of criminal liability.*] A person subject to insane impulses, but whose cognitive faculties appear to be unimpaired, is not by virtue of s. 84 of the Indian Penal Code exempt from criminal liability. *Semble:* In extreme cases it is difficult to say that the cognitive faculties are not affected when the will and the emotions are affected. It may therefore be said that, under the provisions of s. 84 of the Penal Code, exemption from criminal liability by reason of unsoundness of mind extends as well to cases where insanity affects the offender's will and emotions as to those where it affects his cognitive faculties. *Queen-Empress* v. *Lakshman Dagdu*, I. L. R. 10 Bom. 512; *Queen-Empress* v. *Venkatasami*, I. L. R. 12 Mad. 459; and *Queen-Empress* v. *Razai Mia*, I. L. R. 22 Calc. 817, followed. QUEEN-EMPRESS *v.* KADER NASYER SHAH.

[23 Calc. 604

INSOLVENCY.

		Col.
1.	Assignments by Debtor ...	559
2.	Claims of attaching Creditors and Official Assignee ...	560
3.	After-acquired Property ...	562
4.	Insolvent Debtors under Civil Procedure Code ...	563

See CIVIL PROCEDURE CODE, S. 357.

[19 All. 144

See DEBTOR AND CREDITOR.

[20 Bom. 636

See DEED—CONSTRUCTION.

[20 Bom. 310

See CASES UNDER INSOLVENT ACT.

——, Order in, Appeal from.

See DISTRICT JUDGE, JURISDICTION OF.

[17 Mad. 377

—— proceedings.

See COSTS—TAXATION OF COSTS.

[24 Calc. 891

(1) ASSIGNMENTS BY DEBTOR.

1.—*Assignment of stock in trade—Equitable lien—Preferential creditor—Insolvency, Act of—Insolvent Act (11 and 12 Vict. cap. 21), s. 9.*] An insolvent in debt to a bank had given a promissory note for the full amount of the debt due. He also gave, by way of collateral security for the

INSOLVENCY—*continued.*

(1) ASSIGNMENTS BY DEBTOR—*concluded.*

promissory note and for any future advances, a letter of lien over his stock-in-trade, &c., and undertook at the time to execute, whenever called upon to do so, an assignment of his business. This undertaking was never carried out. Two years and three months from the date of the loan the insolvent had addressed a letter to the bank enclosing a cheque for Rs. 600, and requesting that it should be placed to the credit of the loan account:—*Held*, that as regards the amount of the debt secured by the letter of hypothecation, the bank was entitled to rank as preferential creditor; such letter creating a good equitable charge on existing assets. The assignment contemplated by the letter of hypothecation amounted to an act of insolvency within the meaning of s. 9, Insolvent Debtors Act, and created no equity available as against the Official Assignee. IN THE MATTER OF SUMMERS.

[23 Calc. 592

2.—*Attempted preference—Equitable mortgage by deposit of title-deeds—Onus of proof—Evidence Act (I of 1872), ss. 18 and 21—Admission by party—Omission to object to admissibility of evidence.*] After an adjudication, under the Statute 11 and 12 Vict. cap. 21, of insolvency against a trader in Calcutta, a creditor brought this suit against him and the Official Assignee as co-defendants, the latter alone defending. The claim was for payment of a debt, and in default to obtain an order for the sale of land upon which the creditor averred that he held an equitable mortgage by deposit of title-deeds with him, before the adjudication, as security for the debt:—*Held*, that the burden was upon the plaintiff of proving the deposit by way of equitable mortgage to have preceded the adjudication. The Courts below having differed as to whether this prior possession had or had not been proved, an examination of the evidence led to the conclusion that the plaintiff had failed to prove that the title-deeds had been deposited before the date of the adjudication as alleged by him. On the question whether the Courts below should, or should not, have received in evidence the testimony of a witness who had been informed by the plaintiff before the adjudication that documents relating to land had then been deposited with him as security by the person who was afterwards insolvent and who was the first defendant in this suit:—*Held*, that this being an admission by a party within s. 21 of the Evidence Act, 1872, could not be used as evidence in the plaintiff's favour. And *held* that an erroneous omission to object to the admission of such testimony did not make it available as a ground of judgment. MILLER *v.* MADHO DAS.

[19 All. 76
[L. R. 23 I. A. 106

(2) CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

3.—*Attachment before judgment—Insolvency of defendant whose property has been attached before judgment—Right of Official Assignee to attached*

INSOLVENCY—*continued.*

(2) CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—*continued.*

property—Practice—Civil Procedure Code (1882), *ss.* 278, 281, 351 *and* 487.] Plaintiffs filed a suit in a Subordinate Court and attached before judgment some moveable property of the defendant. Before the hearing of the suit, the defendant filed a petition in Bombay under the Insolvency Act, and a vesting order was made:—*Held*, that the Official Assignee was entitled by an application to the Court, in which the suit was filed, to have the attachment raised before the defendant was declared an insolvent. Where a vesting order is made after attachment, and before decree, the title of the Official Assignee takes effect, and prevents the attaching creditor from obtaining satisfaction of his decree by a sale. In such a case the Official Assignee can move by an ordinary motion instead of a regular suit. *Java* v. *Jadavji*, 1 Bom. 224, referred to. *Shib Kristo* v. *Miller*, I. L. R. 10 Calc. 150; and *Sadayappa* v. *Ponnama*, I. L. R. 8 Mad. 554, referred to and followed. TURNER *v.* PESTONJI FARDUNJI.

[20 Bom. 403

4.—*Partnership—Insolvency of one partner—Vesting order—Subsequent decree against insolvent and attachment of the firm property in execution—Claim by Official Assignee to set aside attachment—Civil Procedure Code* (1882), *ss.* 278—283.] The defendant was the manager of a joint Hindu family, consisting of himself and two nephews, carrying on a family business in Bombay, Madras, and other places. In a suit brought in the High Court of Bombay against him as manager of the said joint family, a decree was passed on the 11th April, 1896, which was in terms against the defendant alone. On the same day certain property in Bombay, in which (as found by the Judge) the nephews and the defendant were jointly interested, was attached in execution of the decree. Two days previously, however, *viz.*, on the 9th April, 1896, the defendant had been adjudged an insolvent by the Insolvent Court at Madras under s. 9 of the Indian Insolvent Act (Statute 11 and 12 Vict. *cap.* 21). On the 6th May, 1896, the Official Assignee took out a summons to have the attachment removed:—*Held*, that the claim of the Official Assignee must prevail, and the property be released from attachment. As at the time of the claim of the Official Assignee the defendant's schedule had not been filed, the claim was therefore governed by s. 278 and the following sections of the Civil Procedure Code (Act XIV of 1882). As at the time of the attachment the defendant's interest in the property had by the vesting order been completely divested from him and vested in the Official Assignee, the property was in his possession partly on account of the Official Assignee and partly on account of the solvent partners of his firm; that is, wholly on account of other persons. All his property and all he could honestly dispose of, whether for his own benefit or for the benefit of the joint family, had prior to the attachment passed to the Official Assignee, and, consequently, there was nothing which the decree-holder could attach and sell. Where subsequently to the insolvency of one of several partners a decree is obtained against the firm, and property of the firm is attached in execution, such attachment should be removed. By allowing the execution, the solvent partners abandon their right of administering the joint estate, and in the interest of the joint creditors, the decree-holder must be restrained from going on with the execution, and the partnership assets will be applied by the Insolvent Court in paying the joint creditors rateably, the Official Assignee receiving the insolvent's share of the surplus, and the rest being handed over to the solvent partners. SARDARMAL JAGONATH *v.* ARANVAYAL SABHAPATHY.

[21 Bom. 205

(3) AFTER-ACQUIRED PROPERTY.

5.—*Insolvent Act* (*Statute* 11 *and* 12 *Vict. cap.* 21), *ss.* 7 *and* 27—*Salary—Pension—Personal earnings of insolvent—Attachment previous to vesting order.*] After-acquired property of an insolvent, whether it consists of salary, personal earnings, or property of a different kind, is property which vests in the Official Assignee, but subject to the provision of s. 27 of the Indian Insolvent Act as to salary and pension, and subject to the unwritten law as to personal earnings sufficient for the maintenance, according to his position in life, of the insolvent and his family. Accordingly, the Official Assignee is not entitled to claim such salary or income except by means of an order obtained under s. 27 of the Act, nor such personal earnings at all unless and until in either case the insolvent has accumulated a margin beyond what has been required for his adequate support. An attachment upon the salary of a railway servant ceases to be operative after he has filed his petition in insolvency, and should be withdrawn on notice being given of the making of the vesting order. IN THE MATTER OF DONAGHUE.

[19 Bom. 232

6.—*Insolvent Act* (11 *and* 12 *Vict. cap.* 21), *s.* 7—*Uncertificated insolvent—After-acquired landed property—Mortgage by insolvent—Rights of Official Assignee.*] The Official Assignee applied, under the Insolvent Act, s. 36, for the delivery up to him of a house and furniture of which the occupants were in possession under a mortgage from an insolvent, dated December, 1891. It appeared that the insolvent had been adjudicated in 1888, and had received her personal discharge in 1890, and had obtained the house in question under a deed of gift in April, 1891, and had died intestate in May, 1892, having never obtained a discharge under s. 59. The mortgagees took their mortgage with notice of the insolvency of the mortgagor. The Official Assignee did not become aware that the insolvent had acquired the property in question till September, 1892, when he intervened and claimed the property free from the mortgage:—*Held*,

INSOLVENCY—*continued.*

(3) AFTER-ACQUIRED PROPERTY—*concld.*

that the Official Assignee was entitled to the mortgaged property free from the mortgage. ROWLANDSON *v.* CHAMPION.

[17 Mad. 21

7.—*Deceased insolvent debtor—After-acquired property—Whether it vests in his administrator or in the Official Assignee—Policy of insurance—Vesting order, Effect of—Insolvent Act* (11 *and* 12 *Vict. cap.* 21), *s.* 7.] The Official Assignee sold a policy of insurance on the life of an insolvent, who, after obtaining his personal discharge, died. The purchaser, having bought the policy mainly for the benefit of the insolvent, paid most of the sum realised by him upon it to the Administrator-General, who was about to take out letters of administration to the estate of the insolvent:—*Held*, that the Administrator-General was entitled to the proceeds of the policy in preference to the Official Assignee. IN RE ACKRILL.

[18 Mad. 24

(4) INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

8.—*Civil Procedure Code* (1881), *s.* 344—*Decree passed on appeal—Jurisdiction of original Court to make declaration of insolvency.*] A suit for money was dismissed, but on appeal the High Court passed a decree for the plaintiff. The judgment-debtor made an application to the Court of first instance under Civil Procedure Code, s. 344, to be declared an insolvent:—*Held*, that the Court had jurisdiction to make the declaration sought for. JAMBUVAYYAN *v.* VENKATARAYAR.

[19 Mad. 65

9.—*Civil Procedure Code* (1882), *ss.* 344 *to* 360—*Jurisdiction of second class Subordinate Judge's Court invested by the Local Government with insolvency jurisdiction—Debt of a scheduled creditor exceeding Rs.* 5,000.] Where a person, arrested in execution of a decree for money by the Court of a second class Subordinate Judge invested under s. 360 of the Civil Procedure Code with the powers conferred on District Courts by ss. 344 to 359, makes an application to the Subordinate Judge's Court under s. 344, that Court has power to entertain it and to make the declarations referred to in ss. 344 to 359, and the fact that a debt due to a scheduled creditor exceeds Rs. 5,000 does not deprive it of jurisdiction. SHANKAR RAGHUNATH *v.* VITHAL BABAJI.

[21 Bom. 45

10.—*Civil Procedure Code* (1882), *s.* 344 *et seq.*—*Application for a declaration of insolvency showing that applicant has assets apparently in excess of his liabilities—Burden of proof.*] It does not follow that because a person has assets of a nominal value in excess of his liabilities he is not entitled to be declared an insolvent. But where a person applies to be declared an insolvent, and shows in his statement that his assets exceed his liabilities, he must show also that by the sale of his interests or other realization of his assets a

INSOLVENCY—*continued.*

(4) INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*continued.*

sum would not be secured which would enable him to pay his debts in full. *Jowalla Nath* v. *Parbatty Bibi*, I. L. R. 14 Calc. 125, discussed. BALDEO DAS *v.* SUKHDEO DAS.

[19 All. 125

11.—*Civil Procedure Code* (1882), *ss.* 351, 355, 356 *and* 357—*Insolvent but undischarged judgment-debtor—Application by scheduled creditors to sell subsequently-acquired property of the insolvent.*] The provisions of s. 357 of the Code of Civil Procedure are not applicable until the insolvent has been discharged under s. 351 or s. 355 of the Code. Hence where some of the scheduled creditors of a judgment-debtor, who had been declared an insolvent, and in respect of whose property a receiver had been appointed, but who had not been discharged, presented an application to the Court, purporting to be made under s. 357 of the Code of Civil Procedure, praying for the sale of certain property which had come by inheritance to the judgment-debtor, and the Court, also purporting to act under s. 357 of the Code, made an order on such application allowing the property in question to be released from attachment on deposit by the insolvent of one-third of the scheduled debts; it was *held* that, although the Court might have acted under s. 356 of the Code, yet as its order purported to be under s. 357 it was *ultra vires* and must be set aside. GANESHI LAL *v.* MUSARRAT ALI; GIRWAR LAL *v.* MUSARRAT ALI.

[16 All. 234

12.—*Civil Procedure Code* (1882), *ss.* 350, 359 *and* 373—*Powers exercisable by Court under s.* 359—*Imprisonment—Withdrawal of application by applicants without permission to renew—Payment of costs as a condition precedent to the granting of permission to withdraw.*] A Court acting under s. 359 of the Code of Civil Procedure may, on the motion of a creditor under certain circumstances, order the imprisonment of an applicant for a declaration of insolvency, or it may, under certain circumstances of its own motion, send the applicant to be dealt with by a Magistrate; but it cannot, unless moved by a creditor, pass an order of imprisonment under that section; and if on the motion of a creditor it has ordered the imprisonment of the applicant, it cannot subsequently act under the last clause of s. 359. *Kadir Bakhsh* v. *Bhawani Prasad*, I. L. R. 14 All. 145, referred to. Where an application for a declaration of insolvency having been filed, the applicant asked and obtained permission to withdraw the application absolutely, *i.e.*, without permission to renew the application, it was *held* that the Court could not make the payment by the applicant of the opposing creditor's costs a condition precedent to the granting of such permission so as to enable the Court subsequently to revive the proceedings commenced by the application, but that such proceedings were finally determined by the applicant's withdrawal. HAIDAR SHAH *v.* JAMNA DAS.

[17 All. 156

INSOLVENCY—*concluded.*

(4) INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*concluded.*

13.—*Civil Procedure Code* (1882), *s.* 351—"*Other act of bad faith*"—*Act of bad faith committed by applicant for declaration of insolvency antecedently to his application.*] The expression "any other act of bad faith" as used in s. 351, cl. (*d*) of the Code of Civil Procedure, means any act of bad faith not before mentioned in s. 351 which bears directly upon the conduct of the debtor in the matters leading up to his application for insolvency, and will not exclude any act of bad faith by which he has incurred a then still subsisting liability to any of his creditors, whether the particular creditor is or is not the creditor whose decree is in execution, and whether or not the bad faith is connected with the liability which has resulted in that decree. *Bavachi Packi* v. *Pierce, Leslie & Co.*, I. L. R. 2 Mad. 219, approved; *Salamat Ali* v. *Minahan*, I. L. R. 4 All. 337, distinguished. GOPAL DAS *v.* BIHARI LAL.

[17 All. 218

14.—*Civil Procedure Code* (1882), *ss.* 344, 351 *and* 354—*Order for sale of mortgaged property in execution—Application by judgment-debtor to be declared insolvent—Sale in execution pending application—Effect of subsequent declaration of insolvency.*] An order for the sale of mortgaged property had been made on the application of the mortgagee who had got a decree, and before the sale had taken place, the mortgagor (judgment-debtor) applied to be made insolvent under s. 344 of the Civil Procedure Code (Act XIV of 1882). Five months after the sale he was duly declared an insolvent under s. 351:—*Held*, that the subsequent declaration of the mortgagor's insolvency did not affect the sale or render it illegal. No consequences in derogation of the ordinary rights of judgment-creditors follow from an application by the judgment-debtor under s. 344 of the Civil Procdure Code. It is only when a receiver is appointed under s. 351 that the property of the insolvent vests in the receiver under s. 354, and the rights of the creditor are interfered with. It is not provided that such an order shall have any retrospective effect. ISHVAR LAKHMIDAT *v.* HARJIVAN RAMJI.

[21 Bom. 681

INSOLVENT ACT (11 AND 12 VICT. CAP. 21).

See DEBTOR AND CREDITOR.

[20 Bom. 636

1.—s. 5.—*Jurisdiction—Residence—Insolvency.*] There is nothing to show that the residence contemplated by s. 5 of the Insolvent Act must necessarily be a permanent residence; the object of that section being to extend the benefit of the Act to those who could be said to be *bonâ fide* residents, for the time being, within the jurisdiction of the Court at the time they filed their petitions. IN THE MATTER OF DE MOMET.

[21 Calc. 634

2.—s. 5.—*Letters Patent High Court, cls.* 18 *and* 44—*Jurisdiction of High Court, Bombay—Statute* 24 *and* 25 *Viet. cap.* 104 (*High Court's Charter Act*), *s.* 11—*Act V of* 1872—*Trader at Karachi presenting petition in Bombay—Relation of Insolvent Court to High Court—Effect of Acts limiting jurisdiction of High Court on jurisdiction of Insolvent Court.*] *J C*, a European British subject residing at Karachi in Sind, failed in business in 1895, and, on 11th June of that year, he filed his petition in the Court for Relief of Insolvent Debtors in Bombay:—*Held* that, having regard to Act V of 1872, read with cl. 18 of the Letters Patent, 1865, the Court had no jurisdiction to entertain the petition. By s. 5 of Statute 11 and 12 Vict. cap. 21, the Insolvent Court was given jurisdiction over residents within the jurisdiction of the Supreme Court of Bombay. The jurisdiction of the Supreme Court extended over all inhabitants of the town and island of Bombay and over European British subjects in any of the factories subject to or dependent on the Government of Bombay. The jurisdiction of the Insolvent Court as defined by the above section remained unaffected by the establishment of the High Court in the place of the Supreme Court, except so far as it may be limited by cl. 18 of the Letters Patent, 1865. A European British subject residing within the Presidency of Bombay, though outside the town and island of Bombay, may petition the Insolvent Court of Bombay for relief. The powers and authority originally of the Supreme Court and now of the High Court given by the Insolvent Act form a branch of the jurisdiction of the High Court, and are therefore subject to any legislative restriction of that jurisdiction whether imposed by the Letters Patent or by any subsequent enactment. The power of the High Court, and any Judge of it, to exercise the jurisdiction of the Insolvent Court, whatever the jurisdiction may be, is locally limited by cl. 18 of the Letters Patent, 1865, to the Presidency of Bombay, and cannot be exercised outside that Presidency or outside any area within it to which it may by subsequent enactment be restricted. The effect of cl. 44 of the Letters Patent, 1865, which makes the provision of cl. 18 subject to the legislative powers of the Governor-General in Council, must be that any Act of the Governor-General in Council, still further limiting the jurisdiction of the High Court and excluding it from any place even within the Presidency, must also still further narrow the jurisdiction of the Insolvent Court, for otherwise the Judge of the High Court presiding as Commissioner would be exercising jurisdiction in a place where his jurisdiction under cl. 18, by virtue of which alone he could act as Commissioner, had been abolished. Act V of 1872 is such an Act. IN THE MATTER OF CURRIE.

[21 Bom. 405

INSOLVENT ACT (11 AND 12 VICT. CAP. 21)—*continued.*

——, s. 7.

See INSOLVENCY—AFTER-ACQUIRED PROPERTY.

[17 Mad. 21
[18 Mad. 24
[19 Bom. 232

1.—s. 7.—*Insolvency of managing member of a Hindu family—Effect of vesting order—Official Assignee's power to convey land.*] The managing member of a Hindu family was adjudicated an insolvent, and a vesting order was made. The Official Assignee conveyed a house forming part of the family property of the insolvent to the plaintiff, who now sued for possession. The second defendant was the younger brother of the insolvent; the other defendants were the insolvent's sons:—*Held*, the effect of the vesting order was to entitle the Official Assignee to the shares of the co-parceners as well as that of the insolvent, *Fakerchand Motichand* v. *Motichand Hurruck Chand*, I. L. R. 7 Bom. 438; and he was entitled to transfer such shares provided the debts for payment of which the property is disposed of were shown to have been incurred for purposes binding on such shares. The plaintiff did not prove that the debts which led to the adjudication were incurred for the necessary purposes of the family, and the insolvent's sons did not prove that they were incurred for immoral purposes.—*Held*, therefore, that the Official Assignee could only convey the shares of the sons of the insolvent, and accordingly that the plaintiff was entitled to a moiety of the house only, and that the house should be sold and half the sale-proceeds paid to him. RANGAYYA CHETTI *v.* THANIKACHALLA MUDALI.

[19 Mad. 74

2.—s. 7.—*Vesting order, Effect of—Interest of reversioner expectant on widow's death.*] *B* and *M* were brothers. *M* was adopted by his cousin's widow, and as adopted son had succeeded to property. He died childless in 1870 or 1872, leaving his widow as his heir. His brother *B* was next reversionary heir after *M's* widow, and in 1880 he (*B*) became insolvent, and his estate vested in the Official Assignee, who sold to the plaintiff his interest in certain mortgaged property which had belonged to *M* and was then in the possession of *M's* widow as his heir. *M's* widow died in 1886, and after her death the plaintiff sued to redeem the property from the mortgage:—*Held*, that at the date of his insolvency *M's* widow being then alive, the interest of *B* as reversionary heir in the said property was only a *spes successionis*, which could not vest in the Official Assignee. The plaintiff therefore took no interest in the property by his purchase from the Official Assignee. ANAJI *v.* RATNOJI KRISHNARAV.

[21 Bom. 319

3.—s. 7.—*Vesting order—Subsequent attachment—Dismissal of insolvency petition and discharge of vesting order—Creditors' trustees, Right of, against attaching creditor and sale in execution of his decree.*] A judgment-debtor was declared an insolvent by the Court for the Relief of Insolvent Debtors, Madras, and a vesting order was made. Part of his property was subsequently attached in execution of a decree. Afterwards, his petition in insolvency was dismissed and the vesting order discharged. On the same date a creditor's trust-deed was executed, of which the plaintiffs were the trustees. They now sued to set aside the proceedings in execution and to cancel the sale of the property which had been sold in execution after the date of the trust-deed:—*Held*, that the suit was not maintainable. RAMASAMI KOTTADIAR *v.* MURUGESA MUDALI.

[20 Mad. 452

——, s. 9.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[23 Calc. 592

1.—s. 9.—*Act of insolvency — Jurisdiction of Insolvent Court—Evidence Act (I of 1872), s. 44—Collusion in obtaining adjudication—Partnership—Insolvency of one partner—Firm carried on at several places.*] The defendant was the manager of a joint Hindu family consisting of himself and two nephews carrying on a family business in Bombay, Madras, and other places. In a suit brought in the High Court of Bombay, against him as manager of the said joint family, a decree was passed on the 11th April, 1896, which was in terms against the defendant alone. On the same day certain property in Bombay, in which (as found by the Judge) the nephews and the defendant were jointly interested, was attached in execution of the decree. Two days previously, however, *viz.*, on the 9th April, 1896, the defendant had been adjudged an insolvent by the Insolvent Court at Madras under s. 9 of the Indian Insolvent Act (Statute 11 and 12 Vict. cap. 21). On the 6th May, 1896, the Official Assignee took out a summons to have the attachment removed. It was contended that the creditor's petition in the Madras Insolvent Court disclosed no act of insolvency which could legally justify an adjudication under s. 9 of the Indian Insolvent Act (11 and 12 Vict. cap. 21), and that the adjudication order was therefore made by a Court not competent to make it within the meaning of s. 44 of the Indian Evidence Act (I of 1872), and that, consequently, both it and the vesting order were nullities, and the Official Assignee of Madras had no title to the attached property:—*Held*, that the order, although it might be erroneous and subject to reversal on appeal, was within the competency of the Madras Insolvent Court:—*Held*, also, on the evidence, that there was no proof of such collusion between the creditor and the insolvent in obtaining the order of adjudication as would bring that order within s. 44 of the Indian Evidence Act (I of 1872). SARDARMAL JAGONATH *v.* ARANVAYAL SABHAPATHY.

[21 Bom. 205

INSOLVENT ACT (11 AND 12 VICT. CAP. 21)—*continued.*

2.—s. 9.—*Adjudication of insolvency—Concurrent proceedings in two Insolvent Courts in India—High Court, Jurisdiction of—Discretion of Court to which second application for adjudication order is made—Act of insolvency—Departure from jurisdiction with intent to delay creditors—Stay of proceedings.*] On the 23rd April, 1896, *A* was adjudged insolvent under s. 9 of the Indian Insolvent Act (Statute 11 and 12 Vict. cap. 21) by the Court for the Relief of Insolvent Debtors at Bombay at the instance of certain creditors resident in Bombay. He subsequently took out a rule to annul the order of adjudication on the ground that at the date of the said order he had already (*viz.*, on the 9th April, 1896) been adjudged an insolvent by the Insolvency Court at Madras:—*Held*, discharging the rule, that the prior adjudication of the Madras Court did not deprive the Court at Bombay of jurisdiction to adjudicate him an insolvent at the instance of a Bombay creditor. The latter Court, however, was not bound under s. 9 to make such order, but had a discretion to refuse it if, having regard to all the circumstances of the case, it considered that adjudication in Bombay would be useless. Subsequently to the order of adjudication in Bombay, and while it was still in force, the insolvent obtained his personal discharge in the Insolvent Court at Madras under s. 49 of the Indian Insolvent Act:—*Held*, that there being no longer any ground for apprehending that the proceedings in the Madras Court would be discontinued, the proceedings in the Court at Bombay should be stayed, leaving the Bombay creditors to take such steps in Madras as they might think proper. It would not be just or equitable to allow the proceedings in both Courts to go on concurrently. As the proceedings in Madras were prior in time, and all the assets of the insolvent were vested in the Official Assignee there, the Court at Bombay ought to yield to the prior claim of the Court at Madras. *A*, a debtor in Bombay, summoned his creditors to a meeting fixed for the 28th March, 1896. He attended that meeting, which was adjourned to the 30th March, and at the adjourned meeting he submitted a statement showing that he had a sum of Rs. 11,000 in cash in his hands. Two of his creditors asked him to give inspection of his Bombay books of accounts, but he refused to do so. A further meeting was summoned for the 8th April. On the 31st March or 1st April two of his Bombay creditors served him with a summons in an action of debt. On the 2nd April he left Bombay for Bellary taking the said sum of Rs. 11,000 with him, in order (as he admitted) to prevent the said two creditors from attaching it. The creditors attended the meeting of the 18th April, but it was dissolved when it was discovered that *A* had left Bombay. The books were not produced:—*Held*, that under these circumstances the Court was justified in concluding that *A* had left the jurisdiction of the Court with intent to defeat and delay his creditors within the meaning of s. 9 of the Indian Insolvent Act. IN RE ARANVAYAL SABHAPATHY; EX-PARTE KARAMALLI JOOSUB.

[21 Bom. 297

INSOLVENT ACT (11 AND 12 VICT. CAP. 21)—*continued.*

3.—s. 9.—*Trader out of jurisdiction carrying on business within jurisdiction by gomashta—Creditor's petition against trader alleging act of insolvency through his gomashta—"Departure from place of business, with intent"—How the conduct of gomashta may amount to an act of insolvency by the principal.*] A principal employing a *gomashta* to carry on a trade, within the local limits of the High Court's jurisdiction may, in some cases, be adjudged to have committed an act of insolvency within the meaning of s. 9 of the Statute 11 and 12 Vict. cap. 21, in consequence of the *gomashta's* act without the principal's having specially authorised it, or having had cognizance of it; and this might be applied upon a *gomashta's* having departed from the usual place of business with intent to defeat, or delay, the firm's creditors. Not every *gomashta* stands, in this respect, in the same relation to his employer, there being a difference in the degree of control exercised by different owners. The *gomashta* may be only an ordinary manager, or he may represent the firm entirely. It is a question of fact in each case whether the *gomashta* occupies such a position that the principal stands or falls by his acts, and whether the *gomashta's* departure from the place of business, with the above intent, shall or shall not be, by imputation, the act of the principal, bringing s. 9 into operation against the latter. Here a *munib gomashta* in charge of the business was alleged to have so departed; but the owner of it, though at the time absent, was usually active and responsible in it. The firm's payments had been suspended by the *gomashta*. But under the Indian Statute that is not an act of insolvency. The *gomashta* had withdrawn to his own apartment in the house occupied by the firm, but how this would defeat, or delay, creditors, some of whom visited him there, was not shown. Other acts before the arrival of the principal were done, but none amounted to departure with intent, or to departure at all:—*Held*, that the *gomashta*, even if he had departed from the place of business with the intent to defeat, or delay, creditors, was not in such a position as that he had authority rendering his principal liable to be adjudged insolvent. The principle in the decision of *In re Hurruck Chand Golicha*, I. L. R. 5 Calc. 605, which was that the act of a *gomashta*, his authority flowing from his general position may, in some cases, be taken as the act of his principal rendering him liable within the Statute, was correct. In the present case their Lordships agreed with the High Court that the *gomashta* did not occupy such a position as to make his principal liable to be adjudged insolvent on the ground of his (the *gomashta's*) personal conduct. KASTUR CHAND *v.* DHANPAT SINGH.

[23 Calc. 26
[L. R. 22 I. A. 162

Dismissing appeal from decision of the High Court to the Privy Council in IN RE DHUNPAT SINGH.

[20 Calc. 77

INSOLVENT ACT (11 AND 12 VICT. CAP. 21)—*concluded.*

———, s. 27.

See INSOLVENCY—AFTER-ACQUIRED PROPERTY.

[19 Bom. 232

———, s. 60.—*Trader—Indigo planter—Statute 12 and 13 Vict. cap. 106, s. 65—Workmanship of goods or commodities.*] An indigo planter is a "trader" within the meaning of s. 60 of the Insolvent Act. IN THE MATTER OF DE MOMET.

[21 Calc. 1018

———, s. 63.

See MARRIED WOMEN'S PROPERTY ACT, S. 8.

[18 Mad. 16

———, s. 86.

See TRANSFER OF PROPERTY ACT, S. 135.

[21 Bom. 572

1.—s. 86.—*Discretion of Court as to entering up judgment against insolvent—Final discharge.*] Under s. 86 of the Insolvent Act (Statute 11 and 12 Vict. cap. 2), the Court has a discretion to grant or refuse an application to enter up judgment against an insolvent for the amount of his debts. In exercising the discretion the Court must be guided by the circumstances of the insolvency. IN THE MATTER OF HORMARJI ARDESIR HORMARJI.

[19 Bom. 297

2.—s. 86.—*Entering up judgment against insolvent—Final discharge—Discretion of Court as to.*] In August, 1892, the insolvent was found guilty of various offences under ss. 50 and 51 of the Indian Insolvent Act (11 and 12 Vict. cap. 21) and was sentenced to imprisonment for three months, his discharge being also postponed for a further period of twelve months. In December, 1894, on his application for final discharge under s. 60 of the Act, the Official Assignee applied that before the order of discharge was made, judgment should be entered up against him under s. 86 for the amount of his debts. The Commissioner of the Insolvent Court in the exercise of the discretion given to him by the Act ordered judgment to be entered up accordingly. On appeal by the insolvent:—*Held*, reversing the order, that, under the circumstances of the case, the discretion of the Commissioner had been improperly exercised, and that the order to enter up judgment against the insolvent should be discharged. IN THE MATTER OF HORMARJI ARDESHIR HORMARJI.

[19 Bom. 778

INSOLVENT-DEBTOR.

See APPEAL—ORDERS.

[16 All. 234

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

INSOLVENT-DEBTOR—*concluded.*

See REPRESENTATIVE OF DECEASED PERSON.

[22 Calc. 259

See SURETY — ENFORCEMENT OF SECURITY.

[19 Bom. 694

See SURETY—LIABILITY OF SURETY.

[16 All. 37

[19 Bom. 210

———, Agreement to withdraw opposition to discharge of.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[20 Mad. 84

———, Suit against widow of.

See PARTIES—PARTIES TO SUITS—OFFICIAL ASSIGNEE.

[22 Calc. 259

INSPECTION OF DOCUMENTS.

1.—*Defendant's right to inspection of documents referred to in plaint before filing written statement—Practice.*] A defendant is entitled to have inspection of documents referred to in the plaint although he has not filed his written statement. RAM DYAL SALIGRAM *v.* NURHURRY BALKRISHNA.

[18 Bom. 368

2.—*Affidavit of documents, Sufficiency of—Practice—Right to put in further affidavit in support of claim of privilege where original affidavit is not sufficient—Documents referred to in pleadings as stating facts on which party setting them up relies.*] Where an affidavit of documents stated, with regard to certain documents of which the plaintiffs asked for inspection, that the defendants objected to produce them for inspection "because such documents were obtained after dispute arose, and for purposes of litigation that might arise between them and the plaintiffs:"—*Held*, in an application for their production and inspection, that the affidavit was not sufficient to support the defendant's claim to privilege:—*Held*, also, in such an application, the party claiming privilege is entitled to put in and use a further affidavit in support of the claim of privilege, and is not confined to the grounds made in the affidavit in which the claim is first set up. *M'Corquodale* v. *Bell*, L. R. 1 C. P. D. 471, referred to. Where, however, the party comes into Court relying on the original affidavit as sufficient to support his claim of privilege, but asks the Court, if it should think otherwise, for leave to put in a further affidavit in support of his claim, *quære*, whether he should be allowed to do so. In a suit brought in January, 1884, to recover money for work done and materials supplied in the erection of certain mills for the defendants, in which the defence was that the quality of the work was inferior to that contracted for, and the defendants stated in their written statement that, "in consequence of the information which

INSPECTION OF DOCUMENTS—*concld.*

they had received with regard to the quality of the work done by the plaintiffs, they caused the same to be inspected by two independent engineers, in the month of July, 1893, and they at once discovered such extensive defects therein that the costs of making good such defects will far exceed any possible sum due to the plaintiffs: "—*Held*, that the defendants could not set up a claim of privilege for the reports of the two engineers. *Anderson* v. *Bank of British Columbia*, L. R. 2 Ch. D. 644, referred to. Where a party expressly refers to documents in the pleadings as the source of his own information and knowledge of facts relevant to the suit, and then sets up those facts by way of answer to the plaintiff's claim, he cannot afterwards attempt to make the case that the documents are confidential, and intended merely for his legal advisers, or for the purpose only of evidence in the case. UMBICA CHURN SEN *v.* BENGAL SPINNING & WEAVING CO.

[22 Calc. 105

3.—*Discovery—Minor—Code of Civil Procedure* (1882), *ss.* 129 *and* 136.] An infant party to a suit cannot be compelled under s. 129 of the Code of Civil Procedure to give discovery by affidavit and inspection of documents in his possession relating to the suit. To adopt the practice lately introduced in England would be objectionable mainly on three grounds: (1) because it is not contemplated by the Code of Civil Procedure; (2) because it is inconsistent with existing rules of practice; (3) because there is no method of enforcing an order for discovery against an infant. *Waghji Thackersey* v. *Khatao Rowji*, I. L. R. 10 Bom. 167, referred to; *Nathmull Narsing Das* v. *Malharrao Holkar*, I. L. R. 19 Bom. 350, distinguished. DUNCAN *v.* BHOYRO PROSAD.

[22 Calc. 891

4.—*Discovery—Affidavit of documents—Minor—Practice—Civil Procedure Code* (1882), *s.* 129.] An affidavit of documents may be required from a minor defendant. NATHMULL NARSINGDAS *v.* MALHARRAO HOLKAR.

[19 Bom. 350

INSPECTION OF PROPERTY.

—*Civil Procedure Code* (1882), *s.* 499—*Judicature Acts, Order* 50, *Rule* 3—*Form of order for inspection.*] The plaintiff brought an action against the defendant for damages alleged to have been caused to his house by the erection by the defendant of an adjoining house. On an application by the defendant for an order allowing him or his agents to enter into the house of the plaintiff for the purpose of inspecting, examining and surveying the alleged injuries and for the purpose of examining the materials employed therein and the formations thereof, and to dig excavations for the purpose of exposing the foundations, it was objected by the plaintiff that the Court had no jurisdiction to make the order, as the house of which inspection was sought was not the 'subject of the suit' within s. 499 of the Civil Procedure Code, and that if the order could be made for inspection of the house it

INSPECTION OF PROPERTY—*concld.*

could not be made for inspection of the house, including the zenana apartments, and further, that no order could be made for the excavation of the foundations:—*Held*, that the house and premises of the plaintiff formed the "subject of the suit" within the meaning of s. 499, and under that section the Court had power to make the order applied for:—*Held*, also, that this was a case in which the order should be made. DHORONEY DHUR GHOSE *v.* RADHA GOBIND KUR.

[24 Calc. 117

INSTALMENTS.

——, Agreement to pay by, with enhanced interest.

See CIVIL PROCEDURE CODE, s. 257A.

[19 All. 186

——, Application to pay decree by.

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 15B.

[19 Bom. 318

——, Bond payable by.

See CIVIL PROCEDURE CODE, s. 257A.

[17 Mad. 382

See LIMITATION ACT, ART. 75.

[20 Bom. 109

——, Decree payable by.

See CIVIL PROCEDURE CODE, s. 258.

[21 Calc. 542

See LIMITATION ACT, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.

[21 Calc. 542
[16 All. 371
[19 Mad. 162

See TRANSFER OF PROPERTY ACT, s. 67.

[22 Calc. 859

——, Suit for money payable by.

See LIMITATION ACT, ART. 120.

[17 Mad. 122

See LIMITATION ACT, ART. 132.

[24 Calc. 281

"INSTRUMENT," MEANING OF.

See GUARDIANS AND WARDS ACT, s. 39.

[18 Bom. 375

INSURANCE.

(1) LIFE-INSURANCE.

1.—*Age of assured—Proof of age—Onus of proof—Mistake in statement of age—Fraud.*] A insured his life with the defendant company. By the terms of the policy the declaration of the assured as to his age was made the basis of the

INSURANCE—*continued.*

(1) LIFE-INSURANCE—*continued.*

contract, and the policy was issued subject to the express condition that, in case any statement contained in the declaration were untrue, the policy should be void. The assurance was also expressly made subject to the regulations and conditions contained in the prospectus of the company. The prospectus contained the following provision with regard to the age of parties insured:—"Age admitted in the company's policies in all cases where proof is given satisfactory to the directors. Proof of age can be furnished at any time: if not furnished, it will be necessary on settlement of claim;" and after stating the nature of the "evidence as to age," which the company would accept, the prospectus continued:—"The directors recommend applicants to furnish any of the above as soon as possible and get the age admitted in the policy, as it is required by all soundly conducted companies on settlement of claim if not previously produced." *A* died, and his administrators claimed the amount of the policy:—*Held*, that the above condition contained in the prospectus, which must be read into the policy, imposed on the assured, or his representatives, the obligation of giving proof of age before the company could be called upon to pay. If the evidence had been given in the lifetime of the assured, and an admission of age was attached to the policy, no further proof would be needed, and the *onus* of disputing the age would be thrown on the company; but, in the absence of such evidence and of such admission, it lay upon those claiming upon the policy by reasonable proof to satisfy the Court as to the age of the assured. The prospectus of the company contained a further provision that "policies held by parties on their own lives are indisputable on any ground whatever except fraud:"—*Held*, that this provision did not relieve those claiming upon the policy from the burden of giving proof of age, but it covered a misstatement as to age as well as other misstatements, provided they were not fraudulent. It relieved the assured from the legal effect which an innocent misrepresentation as to age would otherwise have had under the strict terms of the contract. The result therefore was that the plaintiffs should give proof of the age of the assured, but, if such proof disclosed nothing more than an innocent mistake as to age on the part of the assured, the policy would not be vitiated. Subject to the above terms of the prospectus, any untruth in the declaration as to the age of the assured would vitiate the contract. The statement as to the age of the assured amounts to a warranty, and the warranty being broken the risk under the policy would not attach. ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO. *v.* SARAT CHANDRA CHATTERJI.

[20 Bom. 99

2.—*Premiums on policy—Condition of prepayment of Premium — Waiver—Sterling premiums —Case stated under Chap. XXXVIII, Code of Civil Procedure.*] An insurance company, in order to carry out an agreement with the assured to convert a rupee policy into a policy of sterling

INSURANCE—*concluded.*

(1) LIFE-INSURANCE—*concluded.*

value, made an endorsement of the conversion on his policy, it being stated that such conversion was in consideration of all future premiums being paid in sterling. The policy so endorsed was re-delivered to the assured without any demand for the prepayment of the first sterling premium. Subsequently, and before the first sterling premium became due, the assured died:—*Held*, that the prepayment of the sterling premium as a condition precedent to the right to the sterling assurance had been waived, and that the representatives of the assured were entitled to payment of the full amount of the sterling policy. *Canning* v. *Farquhar*, L. R. 16 Q. B. D. 727, distinguished. IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND STERNDALE.

[23 Calc. 320

INSURANCE COMPANY.

——, Liability of, to pay license tax.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 87.

[22 Calc. 581

INSURANCE, POLICY OF.

See STAMP ACT, S. 3, CL. 15.

[19 Bom. 130

INTENTION.

See CRIMINAL TRESPASS.

[22 Calc. 391, 994

[19 Mad. 240

——, Absence of.

See MURDER.

[19 Mad. 483

INTENTION OF PARTIES.

See HINDU LAW — JOINT FAMILY—POWER OF ALIENATION BY MEMBERS—MANAGER.

[18 Bom. 631

See MORTGAGE—FORM OF MORTGAGE.

[21 Calc. 882

[19 All. 434

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[20 Mad. 486

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[22 Calc. 179

INTEREST. *Col.*

1. Miscellaneous Cases ... 578
(*a*) Arrears of Rent ... 578
(*b*) Costs ... 578
2. Omission to Stipulate for, or Stipulated Time has Expired ... 578
3. Stipulations amounting, or not, to Penalties ... 583

INTEREST—*continued.*

See DECREE—FORM OF DECREE—MORTGAGE.

[20 Mad. 120

See EXECUTION OF DECREE — MODE OF EXECUTION—MORTGAGE.

[16 All. 269, 270

See HINDU LAW—DEBTS.

[19 All. 26

See CASES UNDER HINDU LAW—USURY.

See MORTGAGE—ACCOUNTS.

[23 Calc. 228

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[21 Calc. 566

See PRE-EMPTION—PURCHASE-MONEY.

[18 All. 262

See TRANSFER OF PROPERTY. ACT, S. 135.

[24 Calc. 763

——— at enhanced rate, Agreement to pay.

See CIVIL PROCEDURE CODE, S. 257A.

[19 All. 186

———, Credit of, in account.

See LIMITATION ACT, S. 20.

[19 Mad. 340

——— on decree.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

[16 All. 157
[L. R. 21 I. A. 6

———, Payment of.

See LIMITATION ACT, S. 20.

[19 Bom. 663

See REGISTRATION ACT, S. 17.

[19 Bom. 663

——— post diem.

See LIMITATION ACT, ART. 116.

[18 Mad. 257
[17 All. 581
[24 Calc. 699

———, Rate of.

See CASES UNDER HINDU LAW—USURY.

———, Suit for.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[21 Bom. 267

INTEREST—*continued.*

(1) MISCELLANEOUS CASES.

(*a*) ARREARS OF RENT.

1.—*N.-W. P. Rent Act (XII of* 1881), *s.* 34, *cl.* (*a*)—*Contract Act (IX of* 1872), *s.* 73—*Liability of defaulting thekadar to pay interest.*] The non-application of cl. (*a*) of s. 34 of Act XII of 1881 to a *thekadar* does not exempt the *thekadar* from his liability under s. 73 of Act IX of 1872. Hence where a *thekadar* makes default in payment of his rent, he is liable to be charged with interest on the sums due up to the date of payment. GHANSHIAM SINGH *v.* DAULAT SINGH.

[18 All. 240

2.—*Bengal Tenancy Act (VIII of* 1885), *ss.* 67 *and* 178—*Rate of interest specified in kabuliat—Sale for arrears of rent of right of defaulting tenant who has held over—Purchaser of tenure, Rights of.*] In execution of a decree for arrears of rent against a tenant whose term under a *kabuliat* had expired, but who had held over, the plaintiff put up the tenure for sale, and the defendant purchased it. The plaintiff afterwards sued the defendant for interest at the rate and according to the instalments specified in the *kabuliat*:—*Held*, reversing the decision of the Subordinate Judge, that the defendant was liable only for interest at the rate specified in s 67 of the Bengal Tenancy Act. *Ishan Chunder Chowdhury* v. *Chunder Kant Roy*, 13 C. L. R. 55, distinguished. ALIM *v.* SATIS CHANDRA CHATURDHURIN.

[24 Calc. 37

(*b*) COSTS.

3.—*Interest on costs not given in decree of Privy Council.*] Where interest on costs is not allowed in the order of Her Majesty in Council, such interest cannot be given by any Court in this country. *Forester* v. *The Secretary of State for India*, I. L. R. 3 Calc. 161; L. R. 4 I. A. 137, referred to. DAKHINA MOHAN ROY CHOWDHRY *v.* SARODA MOHAN ROY CHOWDHRY.

[23 Calc. 357

(2) OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

4.—*Construction of mortgage — Compound interest—Relative rights of first and second mortgagees of the same property—Mortgage-decree giving terms of redemption of the first by the second.*] There being a first and a second mortgage of the same property, a mortgage-decree (that upon the first by consent) was obtained by each mortgagee respectively, neither of them being a party to the decree obtained by the other. In the first mortgage, it was agreed that, on default by the mortgagor, interest at 12 per cent. should be paid on the principal and interest taken together, the latter being calculated with annual rests. At a judicial sale under the decree obtained by the first mortgagee, he became the purchaser of the greater part of the property. In this suit, which was brought by the first mortgagee's heir now representing him against the second mortgagee,

INTEREST—*continued.*

(2) OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*

making the mortgagors parties, for a declaration of his rights, it was decided that the second mortgagee was entitled to redeem the first mortgage. But the Appellate Court, referring to the consent decree having given simple interest only, made this the basis of an inference that compound interest must now be disallowed :—*Held*, that this was not the right inference; and compound interest was allowed according to the terms of the mortgage. GANGA PERSHAD SAHU *v.* LAND MORTGAGE BANK.

[21 Calc. 366
[L. R. 21 I. A. 1

5.—*Interest Act (XXXII of 1839)—Interest on mortgage money—Transfer of Property Act (IV of 1882), s. 88—Charge on mortgaged property.*] The Court has power under the Interest Act (XXXII of 1839) to give interest on mortgage money, as it is money payable at a certain time, and under a written instrument; and the terms of s. 88 of the Transfer of Property Act make such interest recoverable or payable out of the mortgaged property. The interest on the mortgage is not necessarily only the interest which the parties stipulated by the mortgage-deed should be paid, but would also include interest which under the law is payable, *e.g.*, interest after the due date of the mortgage, where there is no stipulation for interest after the due date. BIKRAMJIT TEWARI *v.* DURGA DYAL TEWARI.

[21 Calc. 274

6.—*Interest Act (XXXII of 1839)—Mortgage—Interest post diem—Transfer of Property Act (IV of 1882), s. 88—Charge.*] The plaintiff sued in December, 1891, upon a registered mortgage, dated 1875, in which it was provided that interest should be paid at the rate therein mentioned, and that the principal should be repaid on 10th April, 1880, but in which there was no provision for payment of interest *post diem* :—*Held*, that interest *post diem* should be awarded under the Interest Act, 1839, at a reasonable rate. *Semble :* The amount so awarded would constitute a charge on the mortgage premises. RAMA REDDI *v.* APPAJI REDDI.

[18 Mad. 248

KRISTNA REDDI *v.* VARADARAJULU REDDI.

[18 Mad. 338 note

7.—*Mortgage — Interest post diem—Transfer of Property Act, s. 88.*] Where the instrument sued on a mortgage hypothecating an interest in land did not provide for interest *post diem*, it was *held* that any claim in the nature of a claim for such interest could be allowed by way of damages only, and was not a charge on the land. In the present case the claim was barred by lapse of time. BADI BIBI SAHIBAL *v.* SAMI PILLAI.

[18 Mad. 257

THAYAR AMMAL *v.* LAKHSHMI AMMAL.

[18 Mad. 331

INTEREST—*continued.*

(2) OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*

8.—*Interest post diem—Mortgage.*] A mortgagee is entitled to interest *post diem*, if there is nothing in the document to indicate that the parties did not intend that interest should be paid after the due date. NITYANANDA PATNAYUDU *v.* RADHA CHERANA DEO.

[20 Mad. 371

9.—*Interest Act (XXXII of 1839)—Suit for money payable under an oral contract.*] *Contract Act (IX of 1872), s. 72.*] The plaintiff sued to recover a sum of money due to her on an oral contract, together with interest. No agreement or usage giving a right to interest was alleged, and no written demand and notice had been given under the Interest Act :—*Held*, that the plaintiff was not entitled to interest. KAMALAMMAL *v.* PEERU MEERA LEVVAI ROWTHEN.

[20 Mad. 481

10.—*Interest post diem—Interest Act (XXXII of 1839)—Transfer of Property Act (IV of 1882), ss. 88 and 89—Interest on mortgage money—Charge on mortgaged property.*] When in a suit for sale under ss. 88 and 89 of Act IV of 1882 a Court allows, under Act XXXII of 1839, interest *post diem*, its decree, so far as such *post diem* interest is concerned, is not a decree for sale under s. 88, but is a decree for money which can be executed in the manner provided for the execution of simple money decrees. *Bikramjit Tewari* v. *Durga Dyal Tewari*, I. L. R. 21 Calc. 274, dissented from. NARINDRA BAHADUR PAL *v.* KHADIM HUSAIN.

[17 All. 581

11.—*Suit by mortgagee on mortgage—Rate of interest up to decree—Transfer of Property Act (IV of 1882), ss. 86 and 88.*] In a suit by a mortgagee to recover the money due on his mortgage, the plaintiff is entitled to interest at the rate specified in the mortgage-deed up to date of decree, and a Civil Court has no discretion to refuse to award such interest. CHATURBHAI KARSAN *v.* HARBHAMJI HARISANGJI.

[20 Bom. 744

12.—*Interest post diem—Damages—Charge on the property—Transfer of Property Act, ss. 88 and 89—Construction of mortgage.*] The use of the term *sudi* (bearing interest) in a mortgage-deed *held* not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage debt, principal and interest, in seven years. Where in a suit upon a mortgage bond *post diem* interest is decreed as damages, the payment of such damages does not constitute a charge upon the mortgaged property. *Narindra Bahadur Pal* v. *Khadim Husain*, I. L. R. 17 All. 581, referred to. RIKHI RAM *v.* SHEO PARSHAN RAM.

[18 All. 316

13.—*Suit on mortgage—Covenant to pay interest—Interest post diem.*] In a suit on a mortgage, it appeared that the instrument sued on was

INTEREST—*continued.*

(2) OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*

executed to secure a sum of money arrived at by calculating interest on sums previously due by the mortgagors, and it was expressed to be for securing the payment of that principal together with interest as it might accrue annually. There was also a provision for compound interest. The principal was payable on the 14th July, 1886, and there was no express stipulation to pay interest after that date:—*Held*, that the mortgagees were entitled to interest for the subsequent period. PEDDA SUBBARAYA CHETTI *v.* GANGA RAZULUNGARU.

[20 Mad. 149

14.—*Post diem interest—Damages—Continuing breach of contract—Construction of mortgage bond—Limitation Act (XV of 1877), Sch. II, Arts. 115 and 116.*] No payment had been made on an agreement contained in a mortgage deed for payment of the principal within a year, and interest thereon at a stated rate. The deed provided that the borrower would not transfer the mortgaged property until payment in full of the amount due for principal and interest, and that any money paid should be first credited to the latter. In a suit brought more than seven years after the date fixed for payment, the Courts below gave effect to the defence that the creditor had no right under the contract to interest at the rate specified therein for the period after that date; and that limitation barred recovery of money by way of damages for a breach of the contract:—*Held*, that the Courts below had erred as to the effect of the contract, and that there had been a failure to regard the intention shown by the conditions in the mortgage-deed above mentioned, the High Court appearing to have acted on a fixed rule of construction, laid down for transactions of this kind, instead of arriving at the meaning of the deed by an examination of its terms. By the true construction of the contract, when the whole of it was considered, the creditor was entitled to payment of the principal with interest at the rate stated in the deed for the entire period of non-payment. This should be down to the date of the decree of the first Court. In the decree should be added interest from its date till payment at six per cent. per annum. Even supposing the construction put by the Courts below to have been correct, the creditor still might have recovered six years' arrears of interest by way of damages, notwithstanding limitation. There had been a breach of contract daily while the principal remained unpaid, and unbarred by time. The judgment of the Full Bench in *Narindra Bahadur Pal* v. *Khadim Husain*, I. L. R. 17 All. 581, was not approved; as it disregarded conditions in the mortgage deed (which in that case resembled the present deed) indicating the intention of the parties to it. MATHURA DAS *v.* NARINDAR BAHADUR.

[19 All. 39

[L. R. 23 I. A. 138

INTEREST—*continued.*

(2) OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*

15.—*Transfer of Property Act (IV of 1882), ss. 86, 88 and 89—Decree for sale on a mortgage—Interest after date fixed for payment—Civil Procedure Code (1882), ss. 209 and 222.*] In a suit upon a mortgage for the sale of the property mortgaged, the Court has no power to allow in the account under s. 86 of the Transfer of Property Act, 1882, or in its declaration under that section, interest for a period beyond the date of payment which has to be fixed within six months from the date of the decree. Sections 209 and 222 of the Code of Civil Procedure, 1882, do not affect the special provisions as to allowance of interest contained in the Transfer of Property Act, 1882. AMOLAK RAM *v.* LACHMI NARAIN.

[19 All. 174

16.—*Transfer of Property Act (IV of 1882), s. 86—Mortgage by conditional sale—Interest after due date—Interest Act (XXXII of 1839)—Limitation Act (XV of 1877), Sch. II, Arts. 116 and 132.*] *Held*, by a majority of the Full Bench (MACLEAN, C. J., O'KINEALY, J., and MACPHERSON, J.), that when a mortgage-bond contains no stipulation for the payment of interest after the due date, interest is payable by virtue of the Interest Act (XXXII of 1839). Art. 116 of Sch. II to the Limitation Act prescribes the period of limitation in such a case; and therefore only six years' interest after the due date at 6 per cent. per annum is recoverable. The mortgagor cannot redeem until he has repaid the principal sum with such interest and costs. *Gudri Koer* v. *Bhubane Swari Coomar Singh*, I. L. R. 19 Calc. 19, approved; *Mathura Das* v. *Narindar Bahadur* L. R. 19 All. 39; L. R. 23 I. A. 138; *Cook* v. *Fowler*, L. R. 6 H. L. 27; and *Bikramjit Tewari* v. *Durga Dyal Tewari*, I. L. R. 21 Calc. 274, referred to:—*Held* (by TREVELYAN and BANERJEE, JJ.), that the interest after due date should be regarded as interest due on the mortgage within the meaning of s. 86 of the Transfer of Property Act (IV of 1882); and, that being so, that it becomes a charge on the mortgaged property, and the period of limitation applicable to the claim for such interest is twelve years, under Art. 132 of Sch. II to the Limitation Act (XV of 1877). MOTI SINGH *v.* RAMOHARI SINGH.

[24 Calc. 699

17.—*Interest post diem—Construction of bond—Damages.*] On the construction of a written contract to repay in two years from its date money with interest at 15 per cent. to be paid half-yearly, arrears of interest being added half-yearly to the principal, the Judicial Committee concurred with the High Court that there was no contract to pay interest at that rate after the date fixed for repayment:—*Held*, that on that construction, the creditor would be entitled on default made in the repayment, to receive interest, but, technically, as damages assessed; and the rate *primâ facie* would be the same as that provided by the con-

INTEREST—*continued.*

(2) OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*concld.*

tract during the two years, although there is no rule of law making that rate necessarily the measure of the damages. The compounding the interest after the expiration of the two years was disallowed, and an account was directed on the basis that the interest *post diem* should be simple, at 15 per cent., down to the date of the plaint, and after that date at 6 per cent. till payment. CHAJMAL DAS *v.* BRIJ BHUKAN LAL.

[17 All. 511
[L. R. 22 I. A. 199

18.—*Mortgage—Interest on mortgage decree—Transfer of Property Act (IV of* 1882), *ss.* 86, 87, 88, 90, 94 *and* 97—*Civil Procedure Code* (1882), *ss.* 209, 222 *and* 644, *Sch. IV, Forms* 109 *and* 128—*Form of decree—Practice.*] The Court has power, under a decree in a mortgage suit under s. 86 of the Transfer of Property Act (IV of 1882), to allow interest subsequent to the date of decree and the date fixed by the decree for payment, until realization. *Amolak Ram* v. *Lachmi Narain*, I. L. R. 19 All. 174, dissented from. ACHALABALA BOSE *v.* SURENDRA NATH DEY.

[24 Calc. 766

(3) STIPULATIONS AMOUNTING, OR NOT, TO PENALTIES.

19.—*Agreement for higher rate on default in payment on certain rate.*] A stipulation in a bond that if the sum secured is not repaid with interest at 12 per cent. on a certain date, the interest shall be at 18 per cent. from the date of the bond is not unenforceable. NARAYANASAMI NAIDU *v.* NARAYANA RAU.

[17 Mad. 62

20.—*Interest at high rate—Penalty—Contract Act (IX of* 1872), *s.* 74—*Precise sum not named but ascertainable.*] A mortgage bond contained the following stipulations as to interest: "I will pay interest for the said amount at the rate of Re. 1-4 per cent. per mensem, and at the end of a year from the date of the bond. I will pay the whole amount of interest due on the principal for that year. If I do not pay the interest in this way at the end of each year, I will be guilty of neglect. You will by instituting suit realize interest upon the arrears of interest (which will be regarded as principal) and upon the principal mentioned in the bond at the rate of Rs. 3-2 per cent. per mensem from the mortgaged property and from me, my heirs, assigns, and representatives and from my other properties. I will continue to pay interest upon the principal for every year from the date of the bond at the end of that year so long as the amount of the bond is not paid. In default of payment, you will act according to the conditions stated above. I will repay this money within three months from date and redeem the mortgage property and mortgage bond.....If I fail to pay up the principal money within the said specified time, I will continue to psy up interest

INTEREST—*concluded.*

(3) STIPULATIONS AMOUNTING, OR NOT TO PENALTIES—*concluded.*

upon the principal at the rate of Re. 1-4 per cent. according to the said stipulation in the bond up to the date of the institution of the suit, and from the date of institution of the suit to that of the decree, and from the date of the decree to that of the realization of the amount":—*Held*, that the plaintiff was not entitled to the higher rate of interest, it being in the nature of a penalty within the meaning of s. 74 of the Contract Act; *Kala Chand Kyal* v. *Shib Chunder Roy*, I. L. R. 19 Calc. 392, referred to; and this was so, although no sum was named within the meaning of that section, because such sum was at once ascertainable. BAID NATH *v.* SHAMANAND DAS.

[22 Calc. 143

21.—*Contract Act (IX of* 1872), *s.* 74—*Penal sum—Enhanced interest—Mortgage—Construction of covenant to pay.*] In a suit to recover principal and interest due on a mortgage, dated the 19th April, 1882, it appeared that the instrument provided that the principal should be repaid with interest at 21 per cent. per annum in two instalments on the 8th May, 1883, and the 27th April, 1884, respectively, and proceeded as follows:—"If the amount of each instalment be not paid on the date of such instalment, we shall make payment with interest at three rupees per cent. per mensem from the date of the bond." No payment had been made on account of principal or interest:—*Held*, that the enhanced rate of interest was a penalty under s. 74 of the Contract Act, and therefore was not recoverable, but that the plaintiff was entitled to recover the principal, together with interest calculated at 21 per cent. up to the dates when the instalments respectively became due, and at 12 per cent. from those dates to the date of the plaint and at 6 per cent. from that date until payment. *Nanjappa* v. *Nanjappa*, I. L. R. 12 Mad. 161; *Kalachand Kyal* v. *Shib Chunder Roy*, I. L. R. 19 Calc. 392; and *Umar Khan Mahamad Khan* v. *Sale Khan*, I. L. R. 17 Bom. 106, followed. GOPALUDU *v.* VENKATARATNAM.

[18 Mad. 175

INTEREST ACT (XXXII OF 1839).

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[21 Calc. 274
[18 Mad. 248, 338 note
[17 All. 581
[24 Calc. 699

See LIMITATION ACT, ART. 116.

[17 All. 581
[24 Calc. 699

INTERLOCUTORY ORDER.

See APPEAL—DECREES.

[24 Calc. 725

INTERLOCUTORY ORDER—*concluded.*

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 35

INTERPLEADER SUIT.

See MUNSIF, JURISDICTION OF.

[20 Mad. 155

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—COMPENSATION FOR ACQUISITION OF LAND.

[20 Mad. 155

—*Civil Procedure Code* (1882), *ss.* 470 *and* 473 *— Costs of plaintiff — Claims by plaintiff against goods in respect of which suit brought—Freight—Wharfage—Demurrage.*] In May, 1893, *S* (defendant No. 4), a resident at Hissar in the Punjab, consigned 600 bags of rapeseed to *K* of Bombay, and delivered them to the plaintiffs for carriage to Bombay. While the goods were in transit to Bombay, *S*, the consignor, ordered the plaintiffs to deliver them to his agent *F*, instead of to the consignee, and, on the 18th May, *F* requested delivery from the plaintiffs. Before the goods could be delivered, however, the firm of *E D S & Co.* (defendants Nos. 1, 2 and 3) claimed them, alleging that they had been assigned to them by *K* for valuable consideration. The plaintiffs thereupon filed this suit praying that the defendants should be required to interplead, and that they should be restrained from suing them (the plaintiffs) in respect of the said goods. The plaintiffs claimed to charge the goods with payment of freight, wharfage and demurrage, and their costs of suit:—*Held* (1) that the suit was properly instituted by the plaintiffs as an interpleader suit so as to entitle them to their costs; (2) that *S*, the fourth defendant, was entitled to the goods, subject to the plaintiffs' charge for freight and costs; (3) that the plaintiffs' charges for wharfage and demurrage could not be allowed. The goods remained in the plaintiffs' possession, not by reason of any neglect or default of the owner to take delivery of them, but by the act of the plaintiffs themselves, who kept and refused to deliver them for their own protection and benefit. All that they could presumably be entitled to, was a reasonable warehouse rent, which, however, they had not claimed. BOMBAY-BARODA AND CENTRAL INDIA RAILWAY CO. *v.* SASSOON.

[18 Bom. 231

INTERROGATORIES.

——, Evidence taken on.

See COMMISSION—CRIMINAL CASES.

[19 Bom. 749

—*Discovery — Production of documents — Code of Civil Procedure* (1882), *ss.* 121, 125, 129, 130, 133 *and* 134—*Definition of term "family."*] To interrogate a party to a suit as to the construction he puts on the meaning of the word "family" is not admissible, although to ask him who the persons are who are living in his household, is

INTERROGATORIES—*concluded.*

so. The former question if replied to would only be of value as the opinion of a party to a suit on what is really a question of law. Under the Civil Procedure Code interrogatories for the purpose of eliciting facts bearing upon issues arising in a suit are limited in operation and are not permissible in cases where the procedure provided by s. 134 of the Code is applicable. *Ali Kader Syud Hossain Ali* v. *Gobind Dass*, I. L. R. 17 Calc. 840; and *Weideman* v. *Walpole*, I. L. R. 24 Q. B. D. 537, approved. Sections 121, 125, 129, 130, 133 and 134 of the Code of Civil Procedure discussed. NITTOMOYE DASSEE *v.* SOOBUL CHUNDER LAW.

[23 Calc. 117

INTESTACY.

See RIGHT OF SUIT—INTESTACY.

[18 Bom. 337

INVENTIONS AND DESIGNS ACT (V OF 1888).

1.—ss. 4 and 30.—*Invention—Improvement —Combination of known substances to produce a known result—Burden of proof.*] *Held*, that a combination, effected by placing one known material side by side with another known material, not involving the exercise of any special inventive power, and ending in a result which differed from previous results only because the materials so placed produced an improved article, did not amount to an "invention" as defined by Act V of 1888:—*Held*, further, that it is for the person who claims an exclusive privilege under the Inventions Act to prove that the facts exist which entitle him to the privilege claimed. ELGIN MILLS CO. *v.* MUIR MILLS CO.

[17 All. 490

2.—ss. 4, 5 and 30.—*New manufacture—"Process," Meaning of.*] In a case where an inventor of a new manufacture or process sold the article produced by the process freely for a large number of years in the open market and then applied for a patent under the Inventions and Designs Act, 1888:—*Held*, that where profit is openly derived from the employment of a secret process, there is a public user of such secret process within the meaning of the Act. The term "invention" having regard to s. 5 of the Act means new manufacture. *Semble:* The term "new manufacture" or "invention" might be applied to a process only:—*Held*, also, that "assignee" in the Act refers to an assignee of the entire title and interest of the inventor; s. 4, sub-section 4 of the Act. *Wood* v. *Zimmer*, Holt, 58, followed. IN THE MATTER OF THE INVENTIONS AND DESIGNS ACT, 1888. GALSTAUN *v.* SHORT.

[23 Calc. 702

IRREGULARITY.

—— affecting or not merits of case.

See CASES UNDER APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

IRREGULARITY—*concluded.*

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[24 Calc. 418

——, Allegation of.

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

[17 Mad. 304

—— in criminal case.

See ABSCONDING OFFENDER.

[19 Mad. 3

See CASES UNDER CRIMINAL PROCEEDINGS.

See JUDGMENT—CRIMINAL CASES.

[21 Calc. 121

[23 Calc. 502

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.

[22 Calc. 176

—— in exercise of jurisdiction.

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

—— in procedure.

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.

[19 Bom. 145

—— in sale.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.

[23 Calc. 351

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[20 Mad. 498

See CASES UNDER SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[21 Calc. 799

—— in stamp.

See COURT-FEES ACT, s. 26.

[19 Bom. 145

ISSUES. *Col.*

1. Framing and Settlement of Issues ... 588

——, Addition or amendment of.

See REMAND—GROUND FOR REMAND.

[19 Mad. 157

ISSUES—*concluded.*

——, Additional, Power of Court to frame.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[19 Mad. 419

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[17 Mad. 262

—— as to legality of order giving leave to sue.

See LETTERS PATENT, HIGH COURT, CL. 12.

[18 Mad. 142

——, Findings on, on remand.

See JUDGMENT—CIVIL CASES.

[19 Bom. 551

—— in form of objection by defendant.

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT.

[24 Calc. 355

—— not in term fixed, but afterwards raised.

See MAHOMEDAN LAW—ENDOWMENT.

[22 Calc. 324

——, Raising new.

See REMAND—GROUND FOR REMAND.

[17 Mad. 69

(1) FRAMING AND SETTLEMENT OF ISSUES.

—*Suit for possession under deed of sale—Issues to be raised—Proof of title.*] In a suit to recover possession based on a deed of sale:—*Held*, that the Court should have raised issues as to ownership and possession, as, even if the sale-deed were not proved, the plaintiff might have been able to substantiate a title independently of it. GOVIND *v.* VITHAL.

[20 Bom. 753

JAILOR IN NATIVE STATE.

See CONFESSION — CONFESSIONS TO POLICE-OFFICERS.

[20 Bom. 795

JAINS.

See HINDU LAW—CUSTOM—GENERALLY.

[16 All. 379

See HINDU LAW—WIDOW—POWER OF WIDOW — POWER OF DISPOSITION OR ALIENATION.

[16 All. 379

JOINDER OF CAUSES OF ACTION.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[16 All. 359

JOINDER OF CAUSES OF ACTION— *concluded.*

1.—*Civil Procedure Code* (1882), *s.* 44—*Misjoinder of causes of action—Zemindari and appurtenant sir land sold by separate deeds—Suit for pre-emption of both zemindari and sir.*] Where a zemindari share and the *sir* land held with it were sold to the same vendee by two separate deeds of sale executed on the same day, it was *held* that a suit to pre-empt both the zemindari share and the *sir* land was not liable to be defeated on the ground of misjoinder of causes of action. AMBIKA DAT *v.* RAM UDIT PANDE.

[17 All. 274

2.—*Civil Procedure Code* (1882), *s.* 44—*Misjoinder of causes of action—Suit by assignee of Mahomedan widow for part of her dower and for part of the estate of the widow's deceased husband.*] *Held* that a suit by the assignee of a Mahomedan widow for the recovery of part of the assignor's dower, and of part of the estate of the assignor's late husband, did not contravene the provisions of s. 44, Rule (*b*) of the Code of Civil Procedure. *Ashabai* v. *Tyeb Haji Rahimulla*, dissented from. AHMAD-UD-DIN KHAN *v.* SIKANDAR BEGAM.

[18 All. 256

JOINT CREDITORS.

See DEBTOR AND CREDITOR.

[20 Mad. 461

JOINT DECREE.

——, Execution of.

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[17 Mad. 394

See EXECUTION OF DECREE — JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER.

[18 Mad. 464

See LIMITATION ACT, S. 7.

[20 Bom. 383

See LIMITATION ACT, ART. 120.

[20 Mad. 23

JOINT FAMILY.

See GUARDIAN—APPOINTMENT.

[19 Bom. 309
[17 All. 529

See HINDU LAW—DEBTS.

[19 All. 26

See CASES UNDER HINDU LAW—JOINT FAMILY.

See INSOLVENT ACT, S. 7.

[19 Mad. 74

See CASES UNDER MALABAR LAW—JOINT FAMILY.

JOINT FAMILY—*concluded.*

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

[18 Bom. 141
[20 Bom. 435

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[17 All. 537

See PARTIES—PARTIES TO SUITS—PARTNERSHIPS, SUITS CONCERNING.

[18 Mad. 33

See PLAINT—AMENDMENT OF PLAINT.

[18 Mad. 33

——, Property held in trust for.

See COURT-FEES ACT, S. 19D.

[23 Calc. 980

——, Separation in.

See LIMITATION ACT, ART. 62.

[24 Calc. 309

——, Suit against members of.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[17 Mad. 122

JOINT FAMILY BUSINESS.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[20 Bom. 767

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

[20 Bom. 767

JOINT LANDLORDS.

See BENGAL TENANCY ACT, S. 56.

[24 Calc. 169

JOINT MANAGERS.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[18 Bom. 522

JOINT PROPERTY.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[19 Bom. 338
[17 All. 578
[23 Calc. 912
[20 Mad. 232

See CASES UNDER CO-SHARERS.

See DECREE—FORM OF DECREE—POSSESSION.

[20 Bom. 467

JOINT PROPERTY—*concluded.*

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

[16 All. 449
[20 Bom. 385

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

[19 Mad. 70
[20 Mad. 207

See HINDU LAW—PARTITION—PROPERTY LIABLE TO PARTITION.

[18 Mad. 73

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[19 Bom. 269

See LUNATIC.

[20 Bom. 659

——, Exclusion from.

See LIMITATION ACT, ART. 127.

[18 Bom. 197

——, Mortgage of.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

[22 Calc. 864

——, Suit by Mahomedan for share of.

See LIMITATION ACT, ART. 127.

[22 Calc. 954

——, Suit for maintenance of possession in.

See LIMITATION ACT, ART. 120.

[16 All. 73

——, Suit for share of.

See LIMITATION ACT, ART. 62.

[24 Calc. 309

JOINT TENANCY.

See WILL—CONSTRUCTION.

[21 Calc. 488

——, Severance of.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[23 Calc. 670
[L. R. 23 I. A. 37

JOINT TENANTS.

See PARTITION—RIGHT TO PARTITION.

[18 All. 334

JOINT TRIAL.

See CONFESSION—CONFESSION OF PRISONERS TRIED JOINTLY.

[19 Bom. 195
[17 All. 524

JOINT WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

[17 Mad. 78
[24 Calc. 330

JUDGE.

——, Privilege of.

See DEFAMATION.

[17 Mad. 87

—Disqualification for trying case — Bias — Mamlatdar acting in the management of property under the orders of the Talukdari Settlement Officer—Possessory suit—Interest disqualifying Judge from trying case.] No Judge can act in any matter in which he has any pecuniary interest, nor where he has any interest, though not a pecuniary one, sufficient to create a real bias. A Mamlatdar, who under the orders of the Talukdari Settlement Officer had acted in the management of the property in dispute in a possessory suit before him, was held to have such an interest as to disqualify him from trying the case. Where an officer of Govenment has in the course of his executive duties "formed an opinion upon a matter and has acted upon that opinion, or sought to give effect to it as an agent on behalf of a public body which has become a litigant in a cause," the law will presume an interest creating a bias sufficient to disqualify him as a Judge. ALOO NATHU *v.* GAGUBHA DIPSANGJI.

[19 Bom. 608

JUDGE OF HIGH COURT.

——, Order of.

See LETTERS PATENT, HIGH COURT, CL. 15.

[19 Mad. 422
[20 Mad. 152, 407

——, Power of.

See LETTERS PATENT, HIGH COURT, CL. 15.

[20 Mad. 152

See REVIEW—POWER TO REVIEW.

[23 Calc. 339

—Appointment of Judge—High Court Charter Act (24 and 25 Vict. cap. 104), ss. 7 and 16—Interpretation of statute—"On the happening of a vacancy"—Nature of power conferred by s. 7 discussed—Evidence—Presumption of law arising from the exercise de facto of the functions of a Judge of a High Court.] The words—"upon the happening of a vacancy in the office of any other Judge—" in s. 7 of the 24 and 25 Vict. cap. 104, mean upon

JUDGE OF HIGH COURT—*concluded.*

the happening of a vacancy in the office of a Judge appointed to his office by Her Majesty. They are not applicable to the case of a vacancy caused by a person appointed to act as a Judge, under the provisions of the second part of the above-mentioned section, ceasing to perform the duties of such office. The words above quoted further mean that the power conferred by s. 7 must be exercised within a reasonable time, that is to say, a practicable time after the happening of a vacancy. It cannot be held that the power conferred by the above-mentioned section can be held in suspense for several years and then be legally exercised. Where a person had in fact for a period of more than a year been exercising all the functions of a Judge of the High Court in virtue of an appointment purporting to be made by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, under sanction of Her Majesty's Secretary of State for India, it was *held* that though, so far as the validity of the appointment depended upon the provisions of ss. 7 and 16 of the 24 and 25 Vict. cap. 104, the appointment was apparently *ultra vires*, it must nevertheless be presumed, in the absence of fuller information, that the appointment was legally made in the exercise of some power, unknown to the Court, vested in the Secretary of State for India. QUEEN-EMPRESS *v.* GANGA RAM.

[16 All. 136

JUDGMENT. *Col.*

1. Civil Cases ... 594
2. Criminal Cases ... 595

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 438

——, Copy of.

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION.

[17 All. 213

——, Copy of, Deduction of time for obtaining.

See LIMITATION ACT, S. 12.

[20 Mad. 476

See MADRAS RENT RECOVERY ACT, S. 69.

[20 Mad. 476

—— in civil suit, Admissibility in evidence of.

See EVIDENCE—CRIMINAL CASES—JUDGMENT IN CIVIL SUIT.

[23 Calc. 610

—— in former suit, Admissibility in evidence of.

See CASES UNDER EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS.

See LANDLORD AND TENANT—NATURE OF TENANCY.

[22 Calc. 533

JUDGMENT—*continued.*

—— on ground not pleaded.

See TRANSFER OF PROPERTY ACT, S. 41.

[17 All. 230

(1) CIVIL CASES.

1.—*Judgment unsupported by reasons—Defective judgment in facts—Grounds of second appeal.*] Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as legal findings of fact in second appeal. *Kamat* v. *Kamat*, I. L. R. 8 Bom. 368 (370); and *Raghunath* v. *Gopal Nilu Nathaji*. I. L. R. 9 Bom. 452 (454), referred to NINGAPPA *v.* SHIVAPPA.

[19 Bom. 323

2.—*Finding of lower Court based on misconception of evidence—Defective judgment in facts—Ground of second appeal.*] The finding on an issue of a lower Appellate Court, which is based on a misconception of what the evidence is, cannot be accepted in second appeal as a legal finding on it. GOVIND *v.* VITHAL.

[20 Bom. 753

3.—*Civil Procedure Code* (1882), *ss.* 566, 569 *and* 574—*Findings on issues on remand—Duty of Appellate Court to form its own opinion on the evidence and record reasons for findings—Procedure.*] In certifying to the High Court the findings on issues sent back on remand and found by the Court of first instance, the lower Appellate Court is, in the absence of any admission by the party against whom the issues have been found, bound to form its own opinion on the evidence and record its findings with the reasons for them. RAMCHANDRA GOVIND MANIK *v.* SONO SADASHIV SARKHOT.

[19 Bom. 551

4.—*Civil Procedure Code* (1882), *s.* 574—*Contents of appellate judgment—Duty of Appellate Court to examine the correctness of a finding in the absence of a memorandum of objections.*] A Judge, having remanded a case for further evidence to be taken and a fresh finding recorded on a question of fact, is bound to examine the correctness of the finding, and to state in his judgment the reasons for which he either accepts or rejects it. KUNHI MARAKKAR HAJI *v.* KUTTI UMMA.

[20 Mad. 496

5.—*Date of operation of judgment—Adjournment for written judgment—Death of party between hearing and judgment—Civil Procedure Code* (1882), *s.* 234—*Practice.*] An appeal having been argued on the 11th November, 1892, the case was adjourned for judgment which was delivered on the 30th November, 1892, and was in favour of the plaintiffs. In the meanwhile the defendant had died. On application for execution, it was contended that the decree was null and void, as the respondent was dead when it was passed:—*Held*, that the judgment should be treated as

JUDGMENT—*continued.*

(1) CIVIL CASES—*concluded.*

operating as if it had been delivered on the day when the argument was closed. NARNA *v.* ANANT.

[19 Bom. 807

(2) CRIMINAL CASES.

6.—*Judgment of Appellate Court—Criminal Procedure Code* (1882), *ss.* 367 *and* 421—*Appeal rejected without any reasons given.*] An Appellate Court on rejecting an appeal under the provisions of s. 421 of the Criminal Procedure Code need not give its reasons for the decision. RASH BEHARI DAS *v.* BALGOPAL SINGH.

[21 Calc. 92

7.—*Criminal Procedure Code* (1882), *ss.* 367 *and* 421—*Summary rejection of appeal—Reasons for rejection.*] It is advisable that a Court, when rejecting an appeal in a criminal case under the provisions of s. 421 of the Code of Criminal Procedure, 1882, should record shortly its reasons for such rejection in view of the possibility of such order being challenged by an application for revision. QUEEN-EMPRESS *v.* NANNHU.

[17 All. 241

8.—*Criminal Procedure Code* (1882), *s.* 421—*Judgment rejecting an appeal.*] In rejecting an appeal under s. 421 of the Code of Criminal Procedure (Act X of 1882), the Appellate Court is not bound to write a judgment. *Rash Behari Das* v. *Balgopal Singh*, I. L. R. 21 Calc. 92, followed. QUEEN-EMPRESS *v.* WARUBAI.

[20 Bom. 540

9.—*Form and contents of judgment—Criminal appeal, Judgment in—Criminal Procedure Code* (1882), *ss.* 367 *and* 424.] A Deputy Commissioner, after hearing an appeal from a Deputy Magistrate who had convicted the appellants of rioting, gave the following judgment: "After hearing the arguments of the pleader for the appellants and examining the record, I am of the opinion that the Lower Court had ample ground for convicting the accused of rioting. I do not consider the sentence too severe. Appeal dismissed":—*Held*, that this was not a judgment within the meaning of ss. 367 and 424 of the Criminal Procedure Code, and that the appeal must be reheard. *Kamruddin Dai* v. *Sonatan Mandal*, I. L. R. 11 Calc. 449; and *In the Matter of the Petition of Ram Das Maghi*, I. L. R. 13 Calc. 110, followed. FARKAN *v.* SOMSHER MAHOMED.

[22 Calc. 241

10.—*Form of judgment—Criminal Procedure Code* (1882), *s.* 367 *and* 424.] On appeal, the Sessions Judge gave the following judgment: "After reading the evidence, and hearing the learned Counsel for the appellant and the learned Government pleader, I am convinced that the Deputy Magistrate has decided the case rightly. The appeal is dismissed":—*Held*, that the judgment was not in accordance with the law within

JUDGMENT—*continued.*

(2) CRIMINAL CASES—*continued.*

the meaning of ss. 367 and 424 of the Criminal Pocedure Code. GIRISH MYTE *v.* QUEEN-EMPRESS.

[23 Calc. 420

11.—*Criminal Procedure Code* (1882), *ss.* 362, 367 *and* 424—*Judgment of Appellate Court—What such judgment must contain.*] A Magistrate having special powers under s. 34 of the Code of Criminal Procedure convicted one *P B* under ss. 471 and 476 of the Indian Penal Code and sentenced him to four years' rigorous imprisonment. *P B* appealed to the Sessions Judge, and on that appeal the Sessions Judge recorded the following judgment:—"I have perused the record and see no cause for interference with the finding of the District Magistrate. As regards the sentence, it is not excessive, but, having regard to the great age of the appellant, I will reduce it to three years' rigorous imprisonment with three months' solitary confinement":—*Held*, that this judgment was in compliance with the provisions of s. 367 of the Code of Criminal Procedure, read with s. 424 of the same Code. QUEEN-EMPRESS *v.* PANDEH BHAT.

[19 All. 506

12.—*Irregularity—Magistrate passing sentence before finishing his judgment—Criminal Procedure Code* (1882), *ss.* 366, 367 *and* 537.] A Magistrate on a charge of rioting passed sentence on the accused without delivering his judgment in open Court, the judgment (one in course of being written during the hearing of the case) being in fact not then completed. The case went on appeal to the Sessions Judge, who dealing fully with the evidence taken before the Magistrate, confirmed the conviction and sentence:—*Held*, *per* PRINSEP and TREVELYAN, JJ., that the judgment of the Magistrate was not one in accordance with the law as laid down in s. 366 of the Criminal Procedure Code; but *held* by PRINSEP and O'KINEALLY, JJ. (TREVELYAN, J., dissenting) that the irregularity was one contemplated by s. 537 of the Code, and not having occasioned any failure of justice, it did not necessitate a re-trial of the case. *Per* TREVELYAN, J.—The case was more than one of mere "error, omission or irregularity" within the meaning of s. 537: the judgment having been irregularly arrived at and pronounced, there was no "judgment" in accordance with law, and therefore no fair trial to which every accused person is entitled; the case ought therefore to be re-tried. DAMU SENAPATI *v.* SRIDHAR RAJWAR.

[21 Calc. 121

13.—*Criminal Procedure Code* (1882), *ss.* 566, 567 *and* 537—*Pronouncing sentence before writing judgment—Irregularity.*] In this case, after the evidence was adduced on both sides, the Assistant Magistrate fixed a day for hearing argument and passing judgment. On that day argument was heard, and the case adjourned to another day for judgment, when the Magistrate pronounced sentence, though he had not written his judgment. The judgment was, however, written in the evening of the same day:—*Held*, the

JUDGMENT—*concluded.*

(2) CRIMINAL CASES—*concluded.*

judgment of the Assistant Magistrate was not in accordance with the provisions of ss. 366 and 367 of the Criminal Procedure Code. In the circumstances of the case, the omission of the Magistrate in recording a judgment before pronouncing his sentence was an omission or irregularity which fell within the purview of s. 537 of the Code. The sentence itself, by reason of this irregularity was not an illegal sentence so as to render the trial nugatory. *Queen-Empress* v. *Harqobind Singh*, I. L. R. 14 All. 242; and *Damu Senapati* v. *Sridhar Rajwar*, I. L. R. 21 Calc. 121, discussed. TILAK CHANDRA SARKAR *v.* BAISAGOMOFF.

[23 Calc. 502

JUDGMENT-DEBTOR.

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUITS.

[19 Mad. 331

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[17 All. 222

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[23 Calc. 682

See SURETY—LIABILITY OF SURETY.

[16 All. 37
[19 Bom. 210

——, Agreement to give time to.

See CIVIL PROCEDURE CODE, s. 257A.

[18 All. 435

——, Bond for production of.

See SURETY—LIABILITY OF SURETY.

[16 All. 37

——, Death of.

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[17 All. 245

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUITS.

[24 Calc. 62
[16 All. 286
[19 All. 332

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 All. 431

JUDGMENT-DEBTOR—*concluded.*

See EXECUTION OF DECREE — EXECUTION BY AND AGAINST REPRESENTATIVES.

[18 Bom. 224
[17 All. 162, 431
[21 Bom. 314
[22 Calc. 558
[23 Calc. 454

See LIMITATION ACT, ART. 179 — NATURE OF APPLICATION—IRREGULAR OR DEFECTIVE APPLICATIONS.

[19 All. 337

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 539
[22 Calc. 259

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[19 Bom. 276
[23 Calc. 686
[21 Bom. 424

——, Insanity of.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[19 Mad. 219

——, Representative of.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[20 Mad. 378

See CASES UNDE CIVIL PROCEDRE CODE, s. 244—PARTIES TO SUITS.

——, Right of.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[20 Mad. 158

JUDICIAL DECISIONS.

See HINDU LAW—CUSTOM—GENERALLY.

[16 All. 379

JUDICIAL PROCEEDING.

See CRIMINAL PROCEDURE CODE, s. 487.

[20 Mad. 283

See SANCTION FOR PROSECUTION — POWER TO GRANT SANCTION.

[19 Mad. 18

JUDICIAL SEPARATION.

See DIVORCE ACT, s. 7.

[22 Calc. 544

JULKUR.

See FISHERY, RIGHT OF.

[22 Calc. 252

See FOREST ACT, s. 45.

[24 Calc. 504
[L .R. 24 I. A. 33

JURISDICTION.

		Col.
1.	Causes of Jurisdiction	... 601
	(*a*) Dwelling, Carrying on Business or Working for Gain	... 601
	(*b*) Cause of Action	... 602
2.	Suits for Land.	... 606
	(*a*) General Cases	... 606
	(*b*) Property in Different Districts	607
3.	Testamentary Jurisdiction	... 608

See COMPANIES ACT, s. 130.

[17 All. 252

See COPYRIGHT.

[19 Bom. 557

See ENDOWMENT.

[20 Bom. 495

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &C.

[21 Calc. 639
[17 Mad. 309
[18 Bom. 61
[22 Calc. 764, 871

See FOREIGN COURT, JUDGMENT OF.

[22 Calc. 222
[L. R. 21 I. A. 171
[18 Mad. 327
[20 Mad. 112

See CASES UNDER HIGH COURT, JURISDICTION OF.

See INSOLVENT ACT, s. 5.

[21 Calc. 634
[21 Bom. 405

See INSOLVENT ACT, s. 9.

[21 Bom. 205, 297

See MAMLATDARS COURTS ACT, s. 3.

[21 Bom. 585

See MAMLATDARS COURTS ACT, s. 4.

[18 Bom. 46

See MUNSIF, JURISDICTION OF.

[21 Calc. 550
[17 Mad. 309

See PROBATE—JURISDICTION OF DISTRICT COURT.

[20 Bom. 607

JURISDICTION—*continued.*

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[18 Bom. 458
[21 Calc. 639
[22 Calc. 871
[19 Bom. 127, 539

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION.

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION.

See TRUST.

[18 Bom. 551

See VALUATION OF SUIT—APPEALS.

[16 All. 286
[18 Bom. 40, 100, 207
[19 Bom. 198
[20 Bom. 265

See VALUATION OF SUIT—SUITS.

[20 Mad. 289
[22 Calc. 692
[24 Calc. 661

——, Consent of parties to.

See MADRAS FOREST ACT, s. 4.

[17 Mad. 193

See MAMLATDAR, JAURISDICTION OF.

[20 Bom. 630

——, Illegal exercise of.

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

——, Property not within.

See HINDU LAW — PARTITION — PARTITION OF PORTION OF PROPERTY.

[18 Bom. 389

——, Question of.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[22 Calc. 483
[19 Bom. 43
[18 Mad. 418
[20 Bom. 86

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.

[22 Calc. 483
[17 All. 478

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[17 All. 478

JURISDICTION—*continued.*

See PAUPER SUIT—SUITS.

[20 Bom. 86

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[18 All. 141

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[19 Bom. 43

[18 Mad. 418

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS — GENERAL CASES.

[21 Calc. 249

——, Submission to.

See FOREIGN COURT, JUDGMENT OF.

[18 Mad. 327

——, Test of.

See PLAINT—RETURN OF PLAINT.

[20 Bom. 675

——, Want of.

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

(1) CAUSES OF JURISDICTION.

(*a*) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

1.—*Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Letters Patent*, 1865, *cl.* 12—*Fresh leave to sue such new defendant necessary.*] Where a defendant is added who does not reside within the jurisdiction of the High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under cl. 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed. RAMPARTAB SAMRATHRAI *v.* FOOLIBAI.

[20 Bom. 767

2.—*Residence for temporary purpose—Receipt of presents by high priest of temple—Office for receiving presents—Purchase of house—Letters Patent, High Court, cl.* 12.] The word "dwell" must be construed with reference to the particular object of the enactment in which it occurs. Residence in Bombay merely for a temporary purpose is not to "dwell" there so as to give jurisdiction to the High Court under cl. 12 of the Letters Patent, 1865:—*Held*, that the mere fact that the defendant had purchased the house which he occupied during a temporary visit to Bombay, afforded no inference of an intention to dwell there. A defendant who was the *acharya* or high priest of the Vaishnava community and the Maharaj Tikait of Shri Nathji at Nathdwara had a *pedhi*, or place of business, in Bombay where devotees paid in any presents they intended

JURISDICTION—*continued.*

(1) CAUSES OF JURISDICTION—*continued.*

(*a*) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*concluded.*

to offer him:—*Held*, that this did not amount to "carrying on business" so as to give the High Court jurisdiction under cl. 12 of the Letters Patent, 1865. The defendant when in Bombay was invited by his devotees and pupils to their houses, where he was treated as an incarnation of the deity with certain forms and ceremonies, and received presents, and gave his blessing:—*Held*, that this did not amount to "personally working for gain" within the meaning of cl. 12 of the Letters Patent, 1865. GOSWAMI SHRI 108 SHRI GIRDHARIJI *v.* GOVARDHANLALJI GIRDHARIJI.

[18 Bom. 290

Held, on appeal to the Privy Council, that the expression "carry on business" in cl. 12 of the Letters Patent, 1865, is intended to relate to business in which a man may contract debts, and ought to be liable to be sued by persons having business transactions with him. The defendant, who was an *acharya* of the Vaishnav community, and was head of their institution at Nathdwara in Udepur, where he usually resided, was, when this suit was brought, in Bombay for a time. He had in the latter place a treasurer and other servants employed in an establishment for the collection and entry of gifts made by devotees; and there, also, donations, made in like establishments elsewhere, were received for transmission to Nathdwara. The defendant, also, while in Bombay accepted offerings on ceremonial visits made, or received by him personally; but no bargain for the amount was made beforehand:—*Held*, by the Privy Council, that in the above transactions there was no "carrying on business" within cl. 12 of the Letters Patent, 1865. GOSWAMI SHRI 108 SHRI GIRDHARIJI *v.* GOVARDHANLALJI GIRDHARIJI.

[18 Bom. 294

[L. R. 21 I. A. 13

3.—*Suit for rent of land in Gwalior, defendant being resident in British India—Place where defendant resides—Civil Procedure Code* (1882), *s.* 17.] *Held* that a suit by a lessor against his lessee to recover rent which had accrued due in respect of agricultural land situated in Gwalior, the plaintiff being a subject of the Gwalior State, but the defendant a British subject resident in the district of Jhansi, was properly brought in a Civil Court in the district of Jhansi. *Gurdyal Singh* v. *Raja of Faridkot*, I. L. R. 22 Calc. 222, referred to. BHUJBAL *v.* NANHEJU.

[19 All. 450

(*b*) CAUSE OF ACTION.

4.—*Performance of contract — Making of contract—Goods to be shipped at Bombay to the plaintiff at Karwar—Place where cause of action arose.*] The plaintiff residing at Karwar sent a sum of money to *K & Co.* (defendant No. 1),

JURISDICTION—*continued.*

(1) CAUSES OF JURISDICTION—*continued.*

(*b*) CAUSE OF ACTION—*continued.*

a firm at Bombay, asking them to send him certain goods. *K & Co.* informed the plaintiff that they had not the goods required by him. The plaintiff thereupon telegraphed to them to pay the amount to defendant No. 2, a resident of Bombay, provided he shipped the goods. On the failure of defendant No. 2 to ship the goods, the plaintiff brought a suit against the defendants in the Court at Karwar to recover the amount. He claimed against *K & Co.* (defendant No. 1) because they had paid the money to the second defendant before the goods were shipped, and against the second defendant because he had not shipped the goods, although he had received the money. The Court at Karwar was of opinion that Karwar was the place where the contract was to be performed, and that therefore it had jurisdiction to entertain the suit, and it passed a decree against defendant No. 2. The claim as against defendant No 1 was dismissed:—*Held*, reversing the decree, that the understanding on which the money was paid to defendant No. 2 by *K & Co.*, and which was the agreement on which the plaintiff sued, was that the second defendant would ship the goods at Bombay to the plaintiff at Karwar. The contract, therefore, as between defendant No. 2 and *K & Co.*, acting on behalf of the plaintiff, was both entered into and intended to be performed at Bombay. The cause of action arose therefore in Bombay, and the Court at Karwar had no jurisdiction. DADABHAI DAJIBHAI *v.* DIOGO SALDANHA.

[18 Bom. 43

5.—*Suit for restitution of conjugal rights—Husband and wife.*] The plaintiff sued his wife for restitution of conjugal rights in the Court of the Subordinate Judge of Borsad, within whose local jurisdiction the plaintiff resided. The defendant contended (*inter alia*) that the Subordinate Judge of Borsad had no jurisdiction to entertain the suit, on the ground that she was living outside his jurisdiction. The Subordinate Judge dismissed the suit for want of jurisdiction. On appeal by the plaintiff, the decree was confirmed. On second appeal:—*Held*, reversing the decree, that the Court of Borsad had jurisdiction. The cause of action, in a suit by a husband for restitution of conjugal rights, consists in the wife's absenting herself from her husband's house without his consent, and it must therefore be deemed to arise at his house. LALITAGAR *v.* BAI SURAJ.

[18 Bom. 316

6.—*Suit on hundi — Endorsement by payee.*] A *hundi*, drawn at Benares on the drawer's firm at Bombay in favour of a firm at Mirzapur and Calcutta, was endorsed at Calcutta by the payee to a firm at Calcutta, and dishonoured by the drawer's firm at Bombay. In a suit brought in Calcutta by the endorsee to recover the value of the *hundi*, the defence was raised that the Court had no jurisdiction to entertain the suit:—*Held*,

JURISDICTION—*continued.*

(1) CAUSES OF JURISDICTION—*continued.*

(*b*) CAUSE OF ACTION—*continued.*

that the endorsement having taken place in Calcutta, part of the cause of action arose in Calcutta, so as to give the Court jurisdiction. *Kellie* v. *Fraser*, I. L. R 2 Calc. 445; and *Daya Narain Tewary* v. *Secretary of State*, I. L. R. 14 Calc. 256, approved. ROGHOONATH MISSER *v.* GOBINDNARAIN.

[22 Calc. 451

7.—*Breach of contract—Suit for dower debt—Civil Procedure Code* (1882), *s.* 17—*Mahomedan law, Dower—Suit for recovery of dower debt from the assets of a deceased Mahomedan.*] A suit for the recovery of a dower debt from the assets of a deceased Mahomedan being a suit on a contract is subject to the provisions as to jurisdiction contained in s. 17 of the Code of Civil Procedure, 1882. Where therefore none of the requisites for jurisdiction given in that section existed within the jurisdiction of the Court in which such a suit was brought, that Court had no jurisdiction to entertain it. SHANKAR DIAL *v.* MUHAMMAD MUJTABA KHAN.

[18 All. 400

8.—*Part of cause of action arising in jurisdiction—Suit on agreement executed within jurisdiction—Place for payment of money under deed—Costs of preparing a deed—Stamp duty.*] In December, 1892, the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants being unable to pay for it in accordance with that agreement entered into a supplementary agreement with the plaintiffs on the 10th August, 1894, whereby it was arranged that the plaintiffs should accept shares in the defendants' company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust, in favour of trustees to be named by the plaintiffs, for the purpose of securing the said debentures, such indenture to be prepared by the plaintiffs' solicitors together with the debentures at the expense of the company and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of and supplemental to the agreement of December, 1892. This agreement was signed in Bombay by J. Marshall on behalf of the plaintiffs. The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors in Bombay. The plaintiffs, having paid in Bombay the solicitor's bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894. The defendants contended that the Court had no jurisdiction, on the ground that they did not reside or carry on business in Bombay, and that no part of the cause of action arose in Bombay:—*Held*, that the Court had jurisdiction. The agreement of August, 1894, was signed in

JURISDICTION—*continued.*

(1) CAUSES OF JURISDICTION—*continued.*

(*b*) CAUSE OF ACTION—*continued.*

Bombay by the plaintiffs' agent on their behalf, and therefore part of the cause of action arose within the jurisdiction. Further, it appeared that it was intended that the payment to be made by the plaintiffs should be made in Bombay, where both the plaintiffs' agent and solicitors resided:—*Held*, also, that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. DOBSON AND BARLOW *v.* BENGAL SPINNING AND WEAVING CO.

[21 Bom. 126

9.—*Letters Patent, High Court, cl.* 12—*Part of cause of action arising in jurisdiction—Partnership—Death of partner—Subsequent recovery of assets by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account.*] In 1889 one *H*, a widow and a partner in a firm carrying on business in partnership with two persons, *viz.*, *G* and *B* (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th February, 1890, the guardian of one *K*, a minor (*H's* husband's nephew), applied to the High Court of Bombay for letters of administration to her estate, alleging that *K* was her heir and next of kin. A *caveat* was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies. The matter came on as a suit on the 19th February, 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H's* estate to issue to the Administrator-General of Bombay. Letters of administration were accordingly granted to him on the 30th March, 1894. In the meantime, however, *viz.*, on the 12th April, 1893, *B* (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No. 1), as surviving partners of *H's* firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July, 1893, it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August, 1893, consent decrees were passed in the above three suits for a total sum of Rs. 28,335, which was forthwith handed over to the receiver. On the 22nd April, 1894, the suit was filed by the Administrator-General of Bombay as administrator of *H* appointed as above stated. He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as her partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the

JURISDICTION—*continued.*

(1) CAUSES OF JURISDICTION—*concluded.*

(*b*) CAUSE OF ACTION—*concluded.*

money to him, and that, if necessary, the partnership accounts should be taken. The second defendant (*inter alia*) pleaded that the suit was one for partnership accounts, and was barred by limitation, and also that the High Court of Bombay had no jurisdiction to try it:—*Held*, that the Court had jurisdiction to hear the suit. The cause of action alleged was that the second defendant was endeavouring, under cloak of his position as surviving partner, to get into his hands a sum of money within the jurisdiction of the Court, with a view to deprive the representatives of his deceased partner of it, and to employ it for his own purposes. That was, at all events, part of the cause of action, and leave to sue had been obtained under cl. 12 of the Letters Patent, 1865. RIVETT-CARNAC *v.* GOCULDAS SOBHANMULL.

[20 Bom. 15

10.—*Letters Patent, High Court, cl.* 12—*Suit on hundi payable at fixed date—Dishonour by non-acceptance—Negotiable Instruments Act (XXVI of* 1881).] On the 14th April, 1889, the defendant at Gwalior drew a *hundi* for Rs. 2,500 on his firm at Bombay in favour of *D* payable forty-five days after date. It was subsequently endorsed at Gwalior by *D* to the plaintiff at Cawnpore who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June, 1889, but, on the 23rd April, 1889, the Bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The Bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. On the 16th June, 1891, the plaintiff filed a suit upon the *hundi* against the defendant at Cawnpore, but, on the 18th March, 1893, the plaint was returned to him, the Court holding that it had no jurisdiction. On the 16th April, 1893, the plaintiff filed this suit in the High Court of Bombay. Previously to the filing of the suit the defendant had ceased to carry on business at Bombay. The defendant contended that the Court had no jurisdiction, inasmuch as (*a*) the defendant was a foreigner, and at the date of suit did not carry on business in Bombay; and (*b*) no part of the cause of action (if any) had arisen in Bombay:—*Held*, (1) that, under the Negotiable Instruments Act (XXVI of 1881), the dishonour of a *hundi* by non-acceptance constitutes now, as it has always done, part of the cause of action in a suit against the drawer; (2) that the Court had jurisdiction under cl. 12 of the Letters Patent, 1865. RAM RAVJI JAMBHEKAR *v.* PRALHADDAS SUBKARN.

[20 Bom. 133

(2) SUITS FOR LAND.

(*a*) GENERAL CASES.

11.—*Letters Patent, High Court, cl.* 12—*Leave to sue—Immoveable property situated outside jurisdiction—Moveable property situated within the jurisdiction—Power to give leave to sue.*] Where the

JURISDICTION—*concluded.*

(2) SUIT FOR LAND—*continued.*

(*a*) GENERAL CASES—*concluded.*

plaintiffs brought a suit for their share of family property consisting of land situated outside the jurisdiction of the High Court, and for moveables situated within, leave having been granted by the Registrar:—*Held*, that the High Court had no jurisdiction as to the lands, and that the suit must be dismissed as to them:—*Held*, further, that leave to sue had been wrongly granted by the Registrar. SESHAGIRI RAU *v.* RAMA RAU.

[19 Mad. 448

(*b*) PROPERTY IN DIFFERENT DISTRICTS.

12.—*Civil Procedure Code* (1882), *ss.* 16, 19 *and* 45—*Joinder of causes of action—Suit for recovery of possession of immoveable property within the territorial jurisdiction of different Courts.*] Where certain plaintiffs claimed possession of separate portions of land situated in two different districts on the same title against the same defendants alleging a dispossession on one day from part of the property claimed in district A, and from the whole in district B, and on another day from the rest of the property in district A:—*Held*, that the plaintiffs could bring one suit for recovery of the whole property in both districts, and that such suit was properly brought in a Court in district A. *Katija* v. *Ismail*, I. L. R. 12 Mad. 380, referred to. HARCHANDAR SINGH *v.* LAL BAHADUR SINGH.

[16 All. 359

13.—*Tarai Regulation* (*IV of* 1876)—*Civil Procedure Code* (1882), *ss.* 1, 2, 19 *and* 24—*Mortgage of property situated partly in the district of Moradabad and partly in the Tarai—Suit for sale in Moradabad Court—Transfer of Property Act* (*IV of* 1882), *s.* 88.] *Held* that the Courts of the Moradabad district had no jurisdiction to pass a decree in a suit for sale on a mortgage, for sale of land situated in the Tarai, to which at the time of the mortgage and of the suit thereon Regulation IV of 1876 applied, by reason merely of a portion of the property mortgaged being situate in the Moradabad district. RAM RATAN *v.* LALTA PRASAD.

[17 All. 483

14.—*Suit for rent of a fishery—Uncertainty as to jurisdiction — Code of Civil Procedure* (1882), *s.* 16*A*—*Immoveable property.*] A suit for rent of a fishery is a suit for immoveable property within the meaning of s. 16A of the Code of Civil Procedure. *Fadu Jhala* v. *Gour Mohun Jhala*, I. L. R. 19 Calc. 544, referred to. A suit for rent of a fishery was brought in a certain Court, and there was reasonable ground of uncertainty as to the jurisdiction of that Court to entertain the suit. On an objection that the suit ought to fail for want of jurisdiction:—*Held*, that the conditions required by s. 16A of the Civil Procedure Code had been satisfied in the case, and that the objection as to jurisdiction ought not to be entertained. SHIBU HALDAR *v.* GUPI SUNDARI DASYA.

[24 Calc. 449

JURISDICTION—*concluded.*

(3) TESTAMENTARY JURISDICTION.

15.—*Reference by executor and caveator to arbitration of question as to due execution of will—Effect of award — Jurisdiction of testamentary Court to recognize arbitration proceedings and award —Application for probate of will.*] In a suit on the Testamentary side of the High Court, the parties can refer any matter in dispute (as the due execution of a will) to arbitration, and the Court will recognize such reference and the award made on it. An executor having propounded a will and applied for probate, a caveat was filed denying the execution of the alleged will, and the matter was duly registered as a suit. The executor and the caveatrix subsequently referred "the dispute" to arbitration, and an award was made that the alleged will had not been duly executed. The executor nevertheless subsequently continued the suit. At the hearing the caveatrix pleaded the award and contended that it was binding on the plaintiff (executor). The plaintiff (executor) contended that the Court as a Court of Probate had no jurisdiction to try any question as to the award, but was limited only to the question of the execution of the will:—*Held*, by CANDY, J., that the Court had jurisdiction to determine the question as to the award:—*Held*, also, that the award was binding on the executor. GHELLABHAI ATMARAM *v.* NANDUBAI.

[20 Bom. 238

This case was reversed on appeal, the Court (FARRAN C. J., and STRACHEY, J.) being of opinion, though holding that it was unnecessary to decide it, that an executor against whose application for probate a caveat has been entered cannot submit to arbitration the question whether the will propounded by him was duly executed by the deceased. GHELLABHAI ATMARAM *v.* NANDUBAI.

[21 Bom. 335

JURISDICTION OF CIVIL COURT.

		Col:
1.	Caste	... 609
2.	Foreign and Native Rulers	... 613
3.	Municipal Bodies	... 613
4.	Offices, Right to	... 614
5.	Pottahs	... 616
6.	Privacy, Invasion of	... 616
7.	Processions	... 616
8.	Registration of Tenures	... 617
9.	Rent and Revenue Suits, Bombay	... 617
10.	Rent and Revenue Suits, N.-W. P.	... 620
11.	Revenue Courts	... 622
	(*a*) Orders of Revenue Courts	... 622

See ACT XX OF 1863.

[17 Mad. 212

See ASSAM LAND AND REVENUE REGULATION.

[24 Calc. 239

See BENGAL TENANCY ACT, SS. 69 AND 70.

[22 Calc. 48

JURISDICTION OF CIVIL COURT— *continued.*

See BOMBAY REVENUE JURISDICTION ACT, S. 4.

[18 Bom. 319

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.

[19 Bom. 145

See DECREE—FORM OF DECREE—POSSESSION.

[18 All. 440

See HEREDITARY OFFICES ACT, S. 17.

[19 Bom. 581

See KHOTI SETTLEMENT ACT, S. 17.

[21 Bom. 235, 244

See KHOTI SETTLEMENT ACT, SS. 20 AND 21.

[18 Bom. 244

See LIMITATION ACT, ART. 14.

[18 Bom. 244

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[23 Calc. 514

See PARTITION—RIGHT OF PARTITION.

[18 All. 334

See PENSIONS ACT, S. 4.

[17 All. 1

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[18 All. 270

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY.

[22 Calc. 551

[18 Bom. 693

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[19 Bom. 216

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION, SS. 11 AND 25.

[22 Calc. 473

(1) CASTE.

1.—*Civil Procedure Code* (1882), *s.* 11—*Suit relating to caste questions—Right of suit by bhakats of religious fraternity expelled by other members for re-admission into fraternity—Powers of fraternity to impose fine and cause expulsion until fine is paid—Cause of action.*] The plaintiffs were some of the *bhakats* or members of a *satra* or religious fraternity, and they claimed the right to enter the *kirtanghar* or prayer-hall, and perform their prayers and other rites therein. They alleged in the plaint that the management of the affairs of the *satra*, "including the distribution

JURISDICTION OF CIVIL COURT— *continued.*

(1) CASTE—*continued.*

of honorarium and offerings and the appointment and dismissal of the *satria*," or head of the fraternity, was vested in the *samuha*, or entire body of *bhakats*, and that they and their forefathers had been from generation to generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies according to the custom of the *satra* until they had been obstructed and interfered with by the defendants in such performance, and had been expelled from the *kirtanghar*. The prayer of the plaint was that the plaintiffs' right to enter the *kirtanghar* to perform the said rites and ceremonies and to receive their share of the offerings might be established; that the *kirtanghar* from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the *satria*, and the other members of the fraternity forming the majority of the entire body of *bhakats*, denied the rights claimed by the plaintiffs as *bhakats*, and stated that the *satra* was governed by the *satria* and a select body of *bhakats*, that the plaintiff No. 1 had received *mantra* or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted moreover of a criminal offence, and a fine of Rs. 100 had accordingly been imposed on him and his partizans by the governing body of the *satra*, whose orders they had disobeyed by refusing to pay the fine, and they had therefore been excluded from entering the *kirtanghar*: and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was therefore not maintainable. The lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the *kirtanghar* on their complying with the order imposing the fine:—*Held*, that the rules laid down in the English cases as to expulsion from clubs or voluntary associations which people are free to join or not, and where any one who joins may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules, are not applicable with regard to caste unions or religious fraternities in India, to which people belong not of choice but of necessity, being born in their respective castes or sects, and the consequences of exclusion from which are far more serious, and affect a person's *status* in a far greater degree, than those of expulsion from a club. In such religious castes or fraternities the protection of Courts of Justice, even though presided over by Judges of a different religious persuasion, against expulsion, is much more needed than in clubs or voluntary associations. Cases of expulsion from them were therefore cognizable by the Civil Courts. *Sudharam Patar* v. *Sudharam*, 3 I. L. R. A. C. 91; 11 W. R. 457; *Hopkinson* v. *Marquis of Exeter*, L. R. 529, 63; and *Dawkins* v. *Antrobus*, L. R. 17 Ch. D. 615, distinguished;

JURISDICTION OF CIVIL COURT—*continued.*

(1) CASTE—*continued.*

Gopal Gurain v. *Gurain*, 7 W. R. 299 ; and *Ramkant* v. *Ram Lochan*, S. D. A. 1859, p. 535, followed. *Advocate-General of Bombay* v. *Haim Devakar*, I. L. R. 11 Bom. 185, not followed :—*Held*, further, that even if the rules laid down in the English cases were applicable, they were subject to a qualification which leaves it open to a Court of Justice to interfere with the decision of a private association on grounds, one of which is that the decision is contrary to natural justice. The decision of the lower Courts, therefore, ordering the re-admission of the plaintiffs to the *kirtanghar*, on their complying with the order imposing the fine, was not such an interference with the decision of the domestic tribunal of the parties as is opposed to the cases cited as to clubs, &c., as it would have been contrary to natural justice for the fraternity to enforce such exclusion after the reason for it had ceased, and make the disqualification of the plaintiffs permanent :—*Held*, on the statements in the plaint, that the plaintiffs had a cause of action, and the suit could not have been properly dismissed on the finding of fact by the lower Appellate Court that the plaintiffs' exclusion from the *kirtanghar* was justified by their refusal to pay the fine imposed on them. JAGANNATH CHURN *v.* AKALI DASSIA.

[21 Calc. 463

2.—*Powers of the head of a caste in respect of caste customs.*] In a matter relating to caste customs over which the ecclesiastical Chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere. A *guru*, as head of a caste, has jurisdiction to deal with all matters relating to the autonomy of caste according to recognised caste customs. *The Queen* v. *Sankara*, I. L. R. 6 Mad. 381 ; and *Murari* v. *Suba*, I. L. R. 6 Bom. 725, cited and followed. GANAPATI BHATTA *v.* BHARATI SWAMI.

[17 Mad. 222

3.—*Caste question—Bombay Regulation II of* 1827, *s.* 21 — *Resolution of caste excluding Brahmans from caste feasts—Majority of caste, Right of.*] The plaintiffs and defendants were members of the Kutchi Dossa Oswal caste of Hindus residing in Bombay. The plaintiffs alleged that by a resolution of the caste, unanimously passed at a caste meeting held on the 19th September, 1893, a committee, of which they were members, was appointed on behalf of the caste for the purpose of preventing Brahmans from attending the feasts of the caste in the caste *oart* in Bombay, and that, on the 16th and 18th July, 1894, by resolutions unanimously passed, the members of the caste were strictly prohibited from feasting any Brahman in the caste *oart*, and the Committee was authorized not to allow any casteman, wishing to feast Brahmans in the *oart*, to use the caste *oart* and caste vessels, and, if necessary, to take legal steps in the matter. The plaint alleged that the defendants proposed to give a feast in the caste *oart* to which they had invited Brahmans, and prayed for an injunction, and for a declaration that the above resolutions were validly passed and were binding upon the defendants and on the caste. The defendants contended that the subject-matter of the suit was a caste question and not cognizable by a Civil Court, and further that the meetings referred to in the plaint had not been duly convened, and that the resolutions were invalid and not binding on those who were not present and who did not consent to them. They alleged that Brahmans had from time immemorial as a matter of course attended the caste feasts, and they denied that the plaintiffs or any members of the caste had now a right to exclude them. The Court found as a fact that a large majority of the caste were in favour of excluding Brahmans from caste feasts :—*Held*, that the majority of the caste having arrived at a *bonâ fide* decision that the convenience and comfort of the caste were best advanced by the exclusion of the Brahmans from their *oart*, it was not a case in which the Court could say that the decision was so subversive of the interest of the minority as to amount to a practical confiscation of their property or denial of their rights, and that the Court ought to give effect to it. The Court accordingly passed a decree in terms of the prayer of the plaint prohibiting the defendants from bringing Brahmans into the *oart* to dine so long as the resolution of the caste prohibiting the practice continued in force. The Court does not decline to give effect to the expressed wishes of the majority of a caste as to the management and custody of caste property, which the minority seek to set at naught, by reason of the suit involving a caste question. In matters relating to the management of caste property and the administration of its affairs, the majority of the caste has authority to control the minority. But the Court will not by its decree enable the majority to make a tyrannical use of its power. It would not assist the majority to deprive without cause the minority of their right to use what is the common property of all, or give effect to a resolution passed in violation of the rules of natural justice or of a directly confiscatory nature. LALJI SHAMJI *v.* WALJI WARDHMAN.

[19 Bom. 507

4.—*Caste question—Bombay Regulation II of* 1827, *s.* 21—*Arrangement between members of the caste for the purpose of paying off the debts of the caste—Mahomedans.*] The term "caste" in s. 21 of Regulation II of 1827 is not necessarily confined to Hindus, but comprises any well-defined Native community governed for certain internal purposes by its own rules and regulations. An agreement embodying an arrangement come to between members of the caste for the purpose of paying off the debts of the caste, out of certain contributions to the caste funds, involves a caste question, and a sui

JURISDICTION OF CIVIL COURT—*continued.*

(1) CASTE—*concluded.*

on such agreement is not maintainable in the Civil Courts. ABDUL KADIR *v.* DHARMA.

[20 Bom. 190

5.—*Caste question—Mochi caste at Surat—Dismissal of delegates by the caste—Suit for injunction and damages.*] The hereditary priests of the Mochi caste deputed certain persons to perform religious ceremonies for the caste. The caste, however, dismissed these delegates, and the defendants, who were members of the caste, employed other persons to perform certain religious ceremonies for them. The plaintiffs sued for an injunction and damages, alleging that they were entitled to perform these ceremonies and to receive the fees:—*Held*, that the Court had no jurisdiction. The Civil Court could not enquire into the validity or otherwise of the decision of the caste in the matter. The parties were bound by it, and the plaintiffs could not legally complain of the action of the defendant, who had done no more than obey that decision. DAYARAM HARGOVAN *v.* JETHABHAT LAKHMIRAM.

[20 Bom. 784

(2) FOREIGN AND NATIVE RULERS.

6.—*Civil Procedure Code* (1882), *s.* 433—*Ruling Chief, Suit against—Consent of Governor-General in Council—Consent given subsequent to institution of suit—Waiver by defendant of objection to consent—Civil Procedure Code, s.* 373.] Under s. 433 of the Civil Procedure Code (Act XIV of 1882) a consent given by the Governor-General in Council after the commencement of a suit against a Ruling Chief—a consent not to the suit being instituted, but to its being proceeded with—is not a sufficient consent. If the consent has not been obtained before the commencement of the suit, the Court should dismiss the suit or allow the plaintiff to withdraw it with liberty to bring a fresh suit under s. 373 of the Civil Procedure Code. Where an insufficient consent has been obtained by the plaintiff, the defendant may by his conduct waive the defect, so that, notwithstanding the absence of a valid consent under the section, the suit can be heard and determined on its merits. CHANDULAL KHUSHALJI *v.* AWAD BIN UMAR SULTAN NAWAZ JUNG BAHADUR.

[21 Bom. 351

(3) MUNICIPAL BODIES.

7.—*Civil Procedure Code* (1882), *s.* 11 — *Bengal Municipal Act* (*Bengal Act III of* 1884)—*Election of Municipal Commissioners—Right to vote and stand as candidate at an election—Suit for declaratory decree—Form of decree—Parties to suit—Magistrate.*] At an election of Municipal Commissioners held under the Bengal Municipal Act (Bengal Act III of 1884), *S*, one of the candidates, was declared to have been elected: a poll was demanded, and *S* was again declared by the presiding officer to have been duly elected. An objection was then taken by the defeated candidates before the Magistrate of the district on the ground that some of the voters gave more votes than there were vacancies, and also on the ground that *S* was not qualified to be registered as a voter and to stand as a candidate for election. The Magistrate set aside the election on both grounds; and *S* brought a suit in the Civil Court for a declaration of his right to vote and stand as a candidate, and for a declaration that he was duly elected:—*Held*, that the suit was one of a civil nature, and under s. 11 of the Code of Civil Procedure (Act XIV of 1882) such a suit would lie in the Civil Court:—*Held*, also, that the Magistrate should not have been made a defendant in the suit, and that the plaintiff was not entitled to a declaration that the election of the plaintiff was good and valid; but that the decree of the first Court granting a declaration of plaintiff's right to vote and stand as candidate was correct. SABHAPAT SINGH *v.* ABDUL GAFFUR.

[24 Calc. 107

(4) OFFICES, RIGHT TO.

8.—*Civil Procedure Code* (1882), *s.* 11—*Suit for right to property and for office or emolument.*] The plaintiffs were some of the *bhakats* or members of a *satra* or religious fraternity, and they claimed the right to enter the *kirtanghar* or prayer hall, and perform their prayers and other rites therein. They alleged in the plaint that the management of the affairs of the *satra*, "including the distribution of honorarium and offerings and the appointment and dismissal of the *satria*," or head of fraternity, was vested in the *samuha* or entire body of *bhakats*, and that they and their forefathers had been from generation to generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies according to the custom of the *satra* until they had been obstructed and interfered with by the defendants in such performance and had been expelled from the *kirtanghar*. The prayer of the plaint was that the plaintiffs' right to enter the *kirtanghar* to perform the said rites and ceremonies and to receive their share of the offerings might be established, that the *kirtanghar* from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the *satria*, and the other members of the fraternity forming the majority of the entire body of *bhakats*, denied the rights claimed by the plaintiffs as *bhakats*, and stated that the *satra* was governed by the *satria* and a select body of *bhakats*, that the plaintiff No. 1 had received *mantra* or spiritual initiation from one *S*, contrary to the rules of the fraternity, and had been convicted, moreover, of a criminal offence, and a fine of Rs. 100 had accordingly been imposed on him and his partizans by the governing body of the *satra*, whose orders they had disobeyed

JURISDICTION OF CIVIL COURT—*continued.*

(4) OFFICES, RIGHT TO—*continued.*

by refusing to pay the fine, and they had therefore been excluded from entering the *kirtanghar:* and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was therefore not maintainable. The lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the *kirtanghar* on their complying with the order imposing the fine:—*Held*, that having regard to the prayer for possession of the *kirtanghar*, and to the allegations made in the plaint about the position and privileges of the *bhakats* and their rights to honorarium and offerings, and to the defendants' denial of those rights, and of the plaintiffs' right to enter the *kirtanghar*. the suit must be regarded as one in which right to property and to an office, within the meaning of the explanation to s. 11 of the Civil Procedure Code, is contested, and, therefore, notwithstanding that the honorarium and offerings were of trifling and merely nominal value, one of a civil nature and cognizable by the Civil Court. JAGANNATH CHURN *v.* AKALI DASSIA.

[21 Calc. 463

9.—*Suit for lands attached to hereditary office —Madras Regulation VI of* 1831, *s.* 3.] A suit in the Civil Courts for '*Maniam*' lands attached to the hereditary office of village carpenter is barred by the operation of s. 3 of Regulation VI of 1831. PALAMALAI PADAYACHI *v.* SHANMUGA AUSARI.

[17 Mad. 302

10.—*Suit for partition and declaration of right to a specific share in a kulkarni vatan and to officiate—Hereditary office—Vatandars Act (Bombay Act III of* 1874), *s.* 67—*Collector, Duty and functions of.*] In a suit for partition of a *kulkarni vatan*, for a declaration that the plaintiffs were entitled to officiate as *kulkarnis* and for a third share in the moiety of the *vatan* belonging to the parties, it was contended that under the Vatandars' Act (Bombay Act III of 1874) the suit was not maintainable in the Civil Court:—*Held*, that the Vatandars Act does not preclude the Civil Court from declaring the plaintiffs' right to the status of *vatandars* when the share defined is in respect of a share in the *vatan* belonging to the branch of the parties, and the declaration does not interfere with the rights of the Collector in any way as given by the Act. In preparing the register, the Collector's duty, as determined by s. 67 of the Act, is confined to specifying the names of the heads of families and the proportionate part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se*. GOVIND SITARAM *v.* BAPUJI MAHADEO.

[18 Bom. 516

11.—*Right to hereditary office of guru — Civil Procedure Code* (1882) *s.* 11.] The plaintiff as Anagundi Raja *guru* claimed to be entitled

JURISDICTION OF CIVIL COURT—*continued.*

(4) OFFICES, RIGHT TO—*concluded.*

and now sued for a declaration of his title, to the hereditary office of priest of Samayacharam. The defendants claimed the office and had collected voluntary contributions in the character of the holders of such office. The office was not connected with any particular temple; no specific pecuniary benefit was attached to it, and the alleged duties of the office were to exercise spiritual and moral supervision over persons wearing a certain caste mark in a certain tract of country:—*Held*, that the suit was not cognizable by a Civil Court. THOLAPPALA CHARLU *v.* VENKATA CHARLU.

[19 Mad. 62

(5) POTTAHS.

12.—*Madras Rent Recovery Act (Madras Act VIII of* 1865). *s.* 10—*Suit for enforcement of pottah and other relief—Declaration as to enforceable stipulations.*] In a suit brought in the Court of a District Munsif by a zemindar and his lessee against a cultivating tenant to enforce the exchange of *pottah* and *muchalka* and for further and other relief:—*Held*, following *Ramayyar v. Vedachella*, I. L. R. 14 Mad. 441, that the Civil Court had jurisdiction, and that a decree should be passed containing a declaration as to the terms which the *pottah* should contain. SATAPPA PILLAI *v.* RAMAN CHETTI.

[17 Mad. 1

13.—*Pottah granted by Government—Application to Government for waste land—Irregular publication of application—Effect of non-compliance with darkhast rules on title.*] The plaintiff, having obtained an assignment from Government of waste land, was obstructed by the defendants in his attempt to enter into occupation, and he sued for a declaration of his title and for possession. It appeared that his application for the land had not been duly published, and certain other formalities had not been observed, as provided by the *darkhast* rules, but the land had been assigned to him and a *pottah* granted by Government:—*Held*, that the plaintiff's title was not invalidated by reason of the non-compliance with the *darkhast* rules, and the Civil Court had no jurisdiction to set aside the plaintiff's *pottah* on that ground. PERIAROYALU REDDI *v.* ROYALU REDDI.

[18 Mad. 434

(6) PRIVACY, INVASION OF.

14.—*Easement—Suit for injunction—Right of suit.*] The invasion of privacy by opening windows is not a wrong for which an action will lie. *Komathi* v. *Gurunada Pillai*, 3 Mad. 141, followed. AZUF *v.* AMEERULIBI.

[18 Mad. 163

(7) PROCESSIONS.

15.—*Suit for declaration of right to carry religious emblems in a procession and for damages—Right of suit—Public highway.*] A suit for de-

JURISDICTION OF CIVIL COURT—*continued.*

(7) PROCESSIONS—*concluded.*

claration of right to carry religious emblems in a procession through the streets of a village, and for damages for preventing the plaintiff from doing so, lies in the Civil Court. In a case in which a Mahomedan of the *Shea* sect, claiming to be a part owner of a village, was prevented by a number of the rival sect of *Sunnis* from introducing the emblems of a standard and flags and a *massak* pierced by an arrow, in the procession of *tazias* during the Mohurrum, it was *held* that a suit of this description would lie, either on the footing that the roads were roads of which the public had the use, or on the footing that the plaintiff had a right as one of the sharers in the village. MOHAMED ABDUL HAFIZ *v.* LATIF HOSEIN.

[24 Calc. 524

See SUJAUDIN *v.* MADHAVDAS.

[18 Bom. 693

(8) REGISTRATION OF TENURES.

16.—*Vendor and purchaser—Right of purchaser to have lands registered in his name in revenue records—Suit for declaration of such right—Bombay Land Revenue Act (Bombay Act V of 1879), ss. 71 and 196—Demand for registration and refusal of Collector as preliminary to right of suit.*] Plaintiffs having purchased certain lands in 1867 brought this suit in the year 1890 to obtain a declaration of their right to have the land registered in their name in the revenue records. An objection having been raised, in second appeal, that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register:—*Held*, that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. BHIKAJI BAJI *v.* PANDU.

[19 Bom. 43

(9) RENT AND REVENUE SUITS, BOMBAY.

17.—*Revenue Jurisdiction Act (X of 1876), s. 4, sub-clause (b)—Bombay Land Revenue Code (Bombay Act V of 1879), s. 216, cls. (a), (b) and (c)—Suit by an inamdar against a khot to recover balance of land revenue—Collector's certificate—Pensions Act (XXIII of 1871), s. 4—Survey by British Government—Change in rate of assessment of revenue.*] In a suit by an *inamdar* of a village against a *khot* to recover rent in kind (according to the market rate at the time of payment), the defendant (*khot*) contended (1) that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid; (2) that the suit was barred for want of the Collector's certificate under s. 4 of the Pensions Act (XXIII of 1871); and (3) that the Civil Court had no jurisdiction to entertain the suit under the Revenue Jurisdiction Act (X of 1876), s. 4, sub-clause (*b*), and the Land Revenue Code (Bombay Act V of 1879), s. 216, sub-clause (*b*):—*Held*, that as there was no objection by either party to the amount or incidence of assessment of land revenue fixed by Government, and the question being whether the *khot* was liable to pay to the *inamdar maktas* of assessment, the suit was not taken away from the cognizance of the Civil Courts by the Revenue Jurisdiction Act (X of 1876), s. 4, sub-clause (*b*):—*Held*, further, that the Court was not precluded from entertaining the suit for want of the Collector's certificate under the Pensions Act (XXIII of 1871), s. 4, because the original grant passed the lands, and because it is the original grant which determines whether the Pensions Act is applicable, and not the actual rights which the grantee, as a matter of fact, may have enjoyed by it:—*Held*, further, that the payment which the *khot* had been making to the *inamdar* before the time of the British survey was in the nature of assessment or rating by Government, but *held*, also, that the plaintiffs were entitled to the old assessment as claimed by them. It was plain that in cases falling within sub-clauses (*a*) and (*c*) of s. 216 of the Land Revenue Code (Bombay Act V of 1879), the *inamdar's* interest in the assessment would not be affected by the application of Chaps. VIII to X of that Act. He would still get the old assessment in the alienated lands in the village in the former case, and the same amount of assessment in the latter; and the same must have been the intention in cases contemplated by sub-clause (*b*). The "holder of the village" in the concluding paragraph of s. 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." GANGADHAR HARI KARKARE *v.* MORBHAT PUROHIT.

[18 Bom. 525

18.—*Bombay Revenue Jurisdiction Act (X of 1876), ss. 4 (c) and 5 (b)—Default in paying assessment of revenue—Payment of assessment by another—Order of Collector transferring lands into name of person paying assessment—Suit by defaulter to recover the land.*] An order made by a Collector removing *A's* lands from his *khata*, and transferring them to *B's khata*, on the ground that *A* had allowed the assessment thereof to fall into arears, and that *B* had paid the assessment, does not by itself amount to forfeiture of *A's* interest in the lands. A suit by *A* to recover such land from *B* being simply a suit between private parties for the purpose of establishing a private right, s. 4 (*c*) of Act X of 1876 does not bar the jurisdiction of the Civil Court. BHAU *v.* HARI.

[20 Bom. 747

19.—*Bombay Revenue Jurisdiction Act (X of 1876), ss. 3 and 11—Revenue Officer—Forest Officer—Forest Act (VII of 1878), s. 81.*] The bar of jurisdiction contained in s. 11 of Act X of 1876 does not apply to cases in which a Collector moves under s. 81 of Act VII of 1878 to recover, at the request of a Forest Officer, the price of cut

JURISDICTION OF CIVIL COURT—*continued.*

(9) RENT AND REVENUE SUITS, BOMBAY—*concluded.*

timber sold by the latter under s. 81 of Act VII of 1878, a Forest Officer not being a Revenue Officer under Act X of 1876. HARIBHAI GANDABHAI *v.* THE SECRETARY OF STATE FOR INDIA.

[20 Bom. 764

20.—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (f), and s. 5—Bombay Survey and Settlement Act (Bombay Act I of 1865), s. 32—Land Revenue Code (Bombay Act V of 1879), ss. 38 and 39—Free pasturage—Land set apart by Government for grazing—Subsequent sale by Government of part of such land—Right of pasturage by the inhabitants of a village over Government waste lands—Right of Government over such land.*] The land comprised in three survey numbers situate in the village of Mahim were set apart by Government as free grazing land for the cattle of villagers. Out of this land about 2,600 acres was sold by Government to one *M* (defendant No. 2) in 1891. The extent of the area over which village cattle grazed before the sale being thus curtailed, the plaintiff for himself and on behalf of the other villagers brought this suit against the Secretary of State and *M*, alleging that the land left for grazing after the sale of 2,600 acres was insufficient for the pasturage of the village cattle, and praying (in the alternative) that Government should set apart so much of the land as might be necessary for free grazing, &c., and that, until such land as was necessary had been set apart, the plaintiff might be declared to have the right of using the land comprised in the three survey numbers as heretofore, and that an injunction might be granted accordingly. Government alleged that the land that was left after the sale to *M* was sufficient for the *bonâ fide* needs of the villagers, and contended (*inter alia*) that the suit was barred under s. 4, cl. (*f*), of the Revenue Jurisdiction Act (X of 1876):—*Held*, confirming the decree of the lower Court dismissing the suit, that while the Courts consistently with the course of legislation may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village, still they can go no further and enjoin the Collector to pursue any particular course in connection with them while he is acting *bonâ fide* in pursuance of the power which the provisions of the statute confer upon him. The claim being against Government respecting the occupation of waste land belonging to Government, the Civil Courts are precluded from entertaining it under s. 4 of the revenue Jurisdiction Act. A question relating to the discontinuous occupation of the village wastes by the village cattle is as much a question of land revenue as one relating to the permanent occupation of them or a portion of them by an individual. TRIMBAK GOPAL RAHALKAR *v.* SECRETARY OF STATE FOR INDIA.

[21 Bom. 684

JURISDICTION OF CIVIL COURT—*continued.*

(10) RENT AND REVENUE SUITS, N.-W. P.

21.—*Suit by zemindars to eject as trespassers, persons who claimed to be mortgagees of an occupancy tenant, such tenant having died without heirs before suit—N.-W. P. Rent Act (XII of 1881), s. 9.*] *S P* and others, zemindars, sued *M K* and others as trespassers to eject them from certain land alleged to form part of the plaintiffs' zemindari. The defendants pleaded that they were mortgagees, holding under a mortgage with possession given by one *S G*, said to be a tenant at fixed rates of the land in suit. It was found that *S G* had been an occupancy tenant not at fixed rates, and that he had died without heirs prior to the institution of the suit:—*Held*, that the suit brought under the above circumstances was cognizable by a Civil Court. *Sakhina Bibi* v. *Swarath Rai*, I. L. R. 15 All. 115, distinguished. MAHABIR KANDU *v.* SHEO PRASAD RAI.

[16 All. 325

22.—*Civil Procedure Code* (1882), *ss.* 2 and 492—*Application to a Civil Court for stay of execution of a decree of a Court of Revenue—"Decree," Meaning of.*] The term "decree" as used in the Code of Civil Procedure does not include the decree of a Court of Revenue:—*Held*, therefore, that an application under s. 492 of the Code of Civil Procedure for stay of sale in execution of a decree of a Court of Revenue in a suit under s. 93 of Act XII of 1881 cannot be entertained by a Civil Court. ONKAR SINGH *v.* BHUP SINGH.

[16 All. 496

23.—*Suit for maintenance of possession as tenants at fixed rates—N.-W. P. Rent Act (XII of 1881), s. 95 (a)—N.-W. P. Land Revenue Act (XIX of 1873), s. 241.*] The plaintiffs sued in a Civil Court alleging that they were tenants at fixed rates of a cultivatory holding, and that at the settlement the Settlement Officer had entered the defendants in the villege papers as the tenants at fixed rates, and the plaintiffs merely as mortgagees, and they asked for a decree for maintenance of possession "invalidating the proceeding of filling up the columns at the recent settlement":—*Held* by the Full Bench (BANERJI, J., *dubitante*) that the suit so framed was not within the cognizance of a Civil Court. AJUDHIA RAI *v.* PARMESHAR RAI.

[18 All. 340

24.—*Suit for recovery of possession by tenant dispossessed by a trespasser.*] Clause (*n*) of s. 95 of Act XII of 1881 (which enacts that suits for recovery of occupancy of land of which a tenant has been wrongfully dispossessed, shall be brought in a Court of Revenue) must be taken to apply to cases in which a tenant of agricultural land has been wrongfully dispossessed by the landlord or, at the instance of the landlord, by some one claiming title through the landholder. Where the dispossession has been by a trespasser the suit is one for a Civil Court. MAULA *v.* BAHALA.

[19 All. 34

JURISDICTION OF CIVIL COURT—*continued.*

(10) RENT AND REVENUE SUITS, N.-W. P.—*continued.*

25.—*N.-W. P. Land Revenue Act (XIX of 1873), s. 241—Suit to recover moveable poperty sold on account of an arrear of revenue due by a person other than the owner of the property.*] Where, in satisfaction of an arrear of revenue due by certain defaulters, some cattle belonging to another person, who had no concern with the land in respect of which the arrear was due, were sold, it was *held* that the remedy of the owner of the cattle lay entirely in the Courts of Revenue, and that no suit would lie in a Civil Court respecting such sale. SECRETARY OF STATE FOR INDIA *v.* MAHADEI.

[19 All. 127

26.—*Jurisdiction of Civil Courts where no remedy obtainable in Courts of Revenue—N.-W. P. Rent Act (XII of 1881), s. 95 (n)—N.-W. P. Land Revenue Act (XIX of 1873), s. 64.*] A plaintiff brought his suit in a Civil Court alleging that he was entitled to the possession of certain land as a tenant at fixed rates, and that in consequence of the order of a Settlement Officer he had been dispossessed by certain persons, alleged by him to be trespassers without title, whom he made defendants, together with the remindar of the land in dispute:—*Held*, that, inasmuch as the plaintiff could, under the circumstances indicated in his plaint, have obtained no relief from a Court of Revenue, the Civil Court was competent to entertain the suit, and to give the plaintiff a decree for possession as against the defendants, other than the zemindar, who were found to be trespassers, notwithstanding that the Civil Court could not declare what was the nature of the plaintiffs' tenancy. *Tarapat Ojha* v. *Ram Ratan*, I. L. R. 15 All. 387; and *Ajudhia Rai* v. *Parmeshar Rai*, I. L. R. 18 All. 340, distinguished. DUKHNA KUNWAR *v.* UNKAR PANDE.

[19 All. 452

27.—*N.-W. P. Rent Act (XII of 1881), ss. 36 and 95, cls. (m) and (n)—"Wrongful dispossession"—Dispossession by process of law—Suit to recover damages for such dispossession.*] The expressions "wrongful dispossession" in cl. (*m*), and "wrongfully dispossessed" in cl. (*n*), of s. 95 of Act XII of 1881, do not include a dispossession by order of Court, though such order may be subsequently reversed on appeal. Where, therefore, a tenant who is evicted under s. 36 and the following sections of the Rent Act, but afterwards reinstated by order of a superior Court of Revenue, sues the evicting zemindar for damages, such a suit may be brought in a Civil Court. *Sawai Ram* v. *Gir Prasad Singh*, I. L. R. 2 All. 737; and *Dhundu Bhagat* v. *Lal Pande*, 1 Leg. Rem. R. and R. 183, referred to. THAKUR DIN *v.* MANNU LAL.

[19 All. 456

28.—*Mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Remedy of mortgagee for non-payment of rent—Jurisdiction of revenue Court.*] Certain mortgagees, in whose favour a deed of mortgage providing for possession in lieu of interest had been executed, on the day following the execution of the mortgage, granted a lease of the mortgaged premises to the mortgagor. The two documents were registered on the same day. The amount of rent reserved by the lease was exactly equivalent to the amount of interest payable under the mortgage, and the mortgage-deed contained a covenant that any arrears due by the lessee should be a charge upon the mortgaged property. In the conterpart of the lease also a similar covenant making the mortgaged property security for the rent payable under the lease was inserted:—*Held*, that under the above circumstances the mortgage and the lease formed merely different parts of the same transaction, and that the mortgagees were entitled to seek their remedy for non-payment of the rent reserved in a Civil Court by means of a suit upon the mortgage, and were not obliged to have recourse to a suit for rent in a Court of Revenue. *Baghelin* v. *Mathura Prasad*, I. L. R. 4 All. 430, followed. ALTAF ALI KHAN *v.* LALTA PRASAD.

[19 All. 496

JURISDICTION OF CIVIL COURT—*continued.*

(10) RENT AND REVENUE SUITS, N.-W. P.—*concluded.*

(11) REVENUE COURTS.

(*a*) ORDERS OF REVENUE COURTS.

29.—*Civil Procedure Code (1882), ss. 312 and 320—Civil Procedure Code Amendment Act (VII of 1888), ss. 30 and 55—Decree transferred to Collector for execution—Suit by auction-purchaser to confirm sale set aside by the Collector—Right of suit.*] A decree was transferred to the Collector for execution. A sale was held by the Collector under that decree. Subsequently that sale was set aside by the Collector by an order under s. 312 of the Code of Civil Procedure. A person who had been an auction-purchaser at the sale so set aside brought a suit in a Civil Court to have the sale restored and confirmed:—*Held*, that such a suit would not lie. *Azimuddin* v. *Baldeo*, I. L. R. 3 All. 554; and *Bandi Bibi* v. *Kalka*, I. L. R. 9 All. 602, referred to, and held to be no longer applicable by reason of the changes effected in the law by Act VII of 1888; but the judgment of OLDFIELD, J., in the former case approved. *Madho Prasad* v. *Hansa Kuar*, I. L. R. 5 All. 314, referred to. SHIB SINGH *v.* MUKAT SINGH.

[18 All. 437

30.—*Suit for declaration contrary to decision of Revenue Court—N.-W. P. Rent Act (XII of 1881), ss. 95 and 96.*] One *N* was an occupancy tenant On his death his widow *J* continued in occupation of the occupancy holding. After the death of *J*, one *S*, alleging herself to be the daughter of *N* and *J*, applied in the Court of Revenue to have her name entered in the village papers as occupancy tenant of *N's* holding in succession to him. The zemindars were made parties to this proceeding. The Court of Revenue decided in favour

JURISDICTION OF CIVIL COURT—*concluded.*

(11) REVENUE COURTS—*concluded.*

(*a*) ORDERS OF REVENUE COURTS—*concluded.*

of the applicant *S*. The zemindars appealed on the revenue side, but their appeal was dismissed:—*Held*, that no suit would lie in a Civil Court on the part of the zemindars for a declaration that they and not *S* were entitled to possession of the occupancy holding in question, and that it should be declared that *S* was not the daughter of *N*. SUBARNI *v.* BHAGWAN KHAN.

[19 All. 101

JURISDICTION OF CRIMINAL COURT.

		Col.
1.	General Jurisdiction	623
2.	Offences committed only partly in one District	... 625
	(*a*) Abetment	... 625
	(*b*) Criminal Breach of Trust	... 626

See ABETMENT.

[16 All. 389

See CRIMINAL PROCEEDINGS.

[17 All. 36

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[24 Calc. 638

See OFFENCE COMMITTED ON HIGH SEAS.

[21 Calc. 782

(1) GENERAL JURISDICTION.

1.—*Jurisdiction of the British Consular Court at Zanzibar over foreign subjects enjoying British protection—Order in Council, dated the 29th November, 1884, s. 6—Greek subjects.*] The Greek residents at Zanzibar having been by international action placed under British protection are liable to the British criminal law in force at Zanzibar. The accused, who was a Greek under British protection at Zanzibar, was convicted by the British Consular Court at Zanzibar of culpable homicide not amounting to murder, and sentenced to ten years' rigorous imprisonment under s. 304 of the Indian Penal Code (Act XLV of 1860). He appealed to the High Court of Bombay, contending (*inter alia*) that he was a Greek subject, and as such not liable to be tried by the Consular Court:—*Held*, that it was competent to Her Majesty to exercise jurisdiction in one foreign State over the subjects of another foreign State; that, under s. 6, cl. (*b*), of Her Majesty's Order in Council, dated the 29th November, 1884, the provisions referring to British subjects were applicable to foreigners enjoying British protection in so far as by treaty, capitulation, grant, usage, sufferance, or other lawful means, Her Majesty had jurisdiction at Zanzibar in relation to such persons; and that the prisoner, being a British protected person within the meaning of s. 4, cl. (*b*), of the Order, was amenable to the jurisdiction of the Consular Court. QUEEN-EMPRESS *v.* REGO MONTOPOULO.

[19 Bom. 741

JURISDICTION OF CRIMINAL COURT—*continued.*

(1) GENERAL JURISDICTION—*continued.*

2.—*Criminal jurisdiction along the railway through Indian Independant States—Locality of crime—Illegal arrest on lands occupied by the Hyderabad State Railway.*] The authority for the exercise of criminal jurisdiction by the Government of India upon lands within the limits of the Hyderabad State Railway is derived from a grant to that Government in 1887 by His Highness the Nizam as ruler of the territory. The railway lands remain part of his dominions. The grant of civil and criminal jurisdiction contained in the correspondence of that year between the Nizam's Minister and the Resident at Hyderabad is expressed to be "along the line of railway as is the case on other lines running through independent States." This jurisdiction notwithstanding any words in the Notification of the Government of India of the 22nd March, 1888 (which could not of itself give any authority, or add to that granted by the Nizam), does not justify the arrest on the lands of the Hyderabad State Railway of a subject of the Nizam under the warrant of the Magistrate of a District in British India, on a charge of a criminal offence committed in British India, and unconnected with the Hyderabad railway administration. The mere presence of the accused on the railway lands, over which criminal jurisdiction had been granted as above, was no legal ground for his arrest under the warrant of the Court in British India, his offence, if committed at all, not having been committed on those lands, and not having been connected with the railway. MUHAMMAD YUSUF-UD-DIN *v.* QUEEN-EMPRESS.

[25 Calc. 20
[L. R. 24 I. A. 137

3.—*Criminal Procedure Code* (1882), *s.* 180—*Offences committed in different districts in the course of the same transaction—Penal Code (Act XLV of* 1860), *ss.* 366 *and* 368—*Kidnapping—Commitment where to be made.*] *R*, *C*, *P*, and *K* were committed by the Joint Magistrate of Muzaffarnagar to the Court of the Sessions Judge of Saharanpur. Upon the case which was before the Joint Magistrate, it appeared that *R* had committed the offence punishable under s. 366 of the Indian Penal Code in the district of Bijnor, and possibly the other three persons had committed the offence punishable under s. 368 of the Indian Penal Code in the district of Muzaffarnagar; *C* and *P* also possibly having committed the offence punishable under that section in Bijnor. Under the above circumstances the High Court, maintaining the order of commitment made by the Joint Magistrate, directed the case to be transferred for trial to the Court for the trial of Sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad. *Reg.* v. *Samia Kaundan*, I. L. R. 1 Mad. 173; and *Queen-Empress* v. *Surja*, Weekly Notes, All. (1883) 164, not followed; *Queen-Empress* v. *Ingle*, I. L. R. 16 Bom. 200; and *Queen-Empress* v. *Abbi Reddi*, I. L. R. 17 Mad. 402,

JURISDICTION OF CRIMINAL COURT —*continued.*

(1) GENERAL JURISDICTION—*concluded.*

referred to. *Queen-Empress* v. *Thaku*, I. L. R. 8 Bom. 312, followed. QUEEN-EMPRESS *v.* RAM DEI.

[18 All. 350

4.—*Criminal Procedure Code* (1882), *s.* 188—*Offence committed outside British territory—Certificate of Political Agent — Kidnapping.*] The absence of the certificate of the Political Agent required by s. 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply QUEEN-EMPRESS *v.* RAM SUNDAR.

[19 All. 109

(2) OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT.

(*a*) ABETMENT.

5.—*Abetment of murder—Rioting—Abetment in British India of an offence committed in foreign territory not an offence under the Penal Code—Penal Code* (*Act XLV of* 1860), *ss.* 109, 115, 147 *and* 302—*Criminal Procedure Code* (1882), *s.* 188.] An abetment in British India by a British subject of an offence committed in foreign territory is not an offence punishable under the Indian Penal Code (XLV of 1860), and cannot therefore be tried by a Court in British India. *Regina* v. *Elmstone*, 7 Bom. H. C. Cr. 89; and *Empress* v. *Moorga Chetty*, I. L. R. 5 Mad. 338, followed. The accused, a Native Indian subject of Her Majesty, was committed to the Court of Sessions for abetting the commission of murder or of rioting under ss. 302 and 147 of the Indian Penal Code. The alleged abetment consisted of words spoken in British territory by the accused, inciting certain Portuguese subjects to kill one Bhana, if he attempted to remove the produce of certain lands situate in the Portuguese territory of Daman. A disturbance afterwards occurred at Daman in connection with this matter, in which one man was killed and another wounded. Thereupon the Governor-General of Portuguese India moved the Government of Bombay, to bring the accused to justice as the instigator of the murder. The Government of Bombay being of opinion that s. 188 of the Code of Criminal Procedure (Act X of 1882) was applicable to the case, passed a Resolution in the Political Department directing the District Magistrate to take the necessary action in the matter. The District Magistrate thereupon committed the accused to the Court of Session on a charge of abetment of murder or of rioting:—*Held*, quashing the commitment, that the alleged abetment was not an offence punishable under the Indian Penal Code, and that therefore the Sessions Court had no jurisdiction to try the accused:—*Held*, also, that s. 188 of the Code of Criminal Procedure had no application to the present case, the alleged offence of abetment not having been committed outside British India. QUEEN-EMPRESS *v.* GANPATRAO RAMCHANDRA.

[19 Bom. 105

JURISDICTION OF CRIMINAL COURT —*concluded.*

(2) OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*concluded.*

(*b*) CRIMINAL BREACH OF TRUST.

6.—*Criminal Procedure Code* (1882), *ss.* 179 *and* 185—*Place where consequence of act ensued—Penal Code* (*Act XLV of* 1860), *s.* 408.] *B*, an employé of a company the office of which was at Cawnpore, was charged with the offence punishable under s. 408 of the Penal Code. The complainant alleged that *B* being in charge on behalf of the company at a place in Bengal, of certain goods belonging to the company, and being ordered to return the said goods to Cawnpore, never did so, and failed to account for the goods, or their value, to the loss of the company:—*Held*, that on the statement of the case by the complainant, the Courts at Cawnpore had jurisdiction to inquire into the charge, inasmuch as the consequence of *B's* acts, namely, loss to the company, occurred in Cawnpore. QUEEN-EMPRESS *v.* O'BRIEN.

[19 All. 111

JURISDICTION OF REVENUE COURT.

See HEREDITARY OFFICES ACT, S. 17.

[19 Bom. 581

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS.

[16 All. 464

[17 Mad. 106

[18 All. 270

[20 Mad. 392

See SURETY—ENFORCEMENT OF SECURITY.

[19 All. 247

—*Madras Rent Recovery Act* (*Madras Act VIII of* 1865), *ss.* 9 *and* 10—*Suit to enforce acceptance of pottah—Bonâ fide denial by defendant of plaintiff's title—Question of title.*] The plaintiff obtained a permanent lease of *inam* lands attached to a mosque from the four owners thereof. The defendant was a cultivating tenant on the lands, and the plaintiff duly offered the defendant a *pottah*. The defendant refused to execute a corresponding *muchilika* on the ground that the plaintiff was not his landlord, since the first of the aforesaid owners had granted a lease for 35 years to a person who had sublet the land to the defendant. The plaintiff thereupon brought a suit to enforce acceptance of a *pottah* under s. 9 of Madras Act VIII of 1865. The Deputy Collector having decided the case in the plaintiff's favour, the defendant appealed, and the District Judge dismissed the suit on the ground that the defendant's contention raised a *bonâ fide* question of title which ousted the jurisdiction of the Deputy Collector:—*Held*, that there is no provision in Madras Act VIII of 1865 that a *bonâ fide* denial of the relation-

JURISDICTION OF REVENUE COURT —*concluded.*

ship of landlord and tenant ousts the jurisdiction of the Revenue Courts; and, with regard to s. 10 of the Act, whenever a Court is invested with jurisdiction to determine the existence of a particular legal relation, the intention must be taken to be to authorize it to adjudicate on every matter of fact or of law incidental to such adjudication. *Narayana Chariar* v. *Ranga Ayyangar*, I. L. R. 15 Mad. 223; and *Ayappa* v. *Venkata Krishnamarazu*, I. L. R. 15 Mad. 485, cited and followed. ABDUL RAHIMAN SAHIB *v.* ANNA PILLAI.

[17 Mad. 140

JURY.

Col.

1. Jury under Nuisance Sections of Criminal Procedure Code ... 627

——, Trial by.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[21 Calc. 955

See CASES UNDER VERDICT OF JURY.

(1) JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

1.—*Constitution of jury—Criminal Procedure Code* (1882), *ss.* 133 *to* 138—*Nomination of jury by Magistrate.*] In the nomination of those members of the jury, the nomination of whom devolves upon the Magistrate under the provisions of s. 138 of the Criminal Procedure Code, it is his duty to exercise his own independent discretion, and not merely to accept persons who may be put forward by the party opposed to the applicant. A jury constituted in violation of the provisions of s. 138 is not legally constituted, and is incapable of making a legally binding award. *Dino Nath Chuckerbutty*, v. *Hur Gobind Pal*, 16 W. R. Cr. 23; and *Shatyanundo Ghosal* v. *Camperdown Pressing Co.*, 21 W. R. Cr. 43, followed. UPENDRA NATH BHUTTACHARJEE *v.* KHITISH CHANDRA BHUTTACHARJEE.

[23 Calc. 499

2.—*Order for removal of obstruction in public way—Jury appointed to consider reasonableness of order—Magistrate deciding contrary to verdict of jury—Criminal Procedure Code* (1882), *ss.* 133, 135, 138 *and* 139.] One *K R*, having been ordered by a Magistrate under s. 133 of the Code of Criminal Procedure to remove an alleged obstruction, applied for a jury. Five jurors were chosen who, having examined the place in dispute, proceeded without consultation to deliver separate and independent opinions. The verdict of the majority was in favour of upholding the Magistrate's order. The Magistrate, however, discharged his order. On reference by the Sessions Judge, under s. 438 of the Code, it was *held* that the last order of the Magistrate should be set aside, and the case remanded for consideration by a fresh jury. QUEEN-EMPRESS *v.* KHUSHALI RAM.

[18 All. 158

JUSTICE, EQUITY, AND GOOD CONSCIENCE, RULE OF.

See COMPANY—WINDING UP—CLAIMS ON ASSETS.

[16 All. 53

KABULIAT.

—— executed before Bengal Tenancy Act.

See CONTRACT ACT, s. 74.

[22 Calc. 658

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT.

[22 Calc. 658

KARNAM.

—— on zemindari.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—DAUGHTER'S SON.

[18 Mad. 420

See MADRAS REGULATION XXIX OF 1802, s. 7.

[18 Mad. 420

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT SUITS AGAINST.

[18 Mad. 395

—*Karnam in permanently settled estate—Madras Regulation XXXV of* 1802, *ss.* 8 *and* 11—*Madras Regulation XXIX of* 1802, *s.* 5—*Right to sue for removal of karnam—Delegation of such right to lessees of zemindari—Damages accrued by a karnam's neglect of a statutory duty.*] The lessees of a zemindari are not entitled to sue for the removal of a *karnam* from office, though their lease contains a provision purporting to authorise them to appoint and remove *karnams;* but if they suffer any loss from the *karnam's* neglect of his statutory duty, they are entitled to bring an action for damages against him. KUMARASAMI PILLAI *v.* ORR.

[20 Mad. 145

KAZI.

See COLLECTOR.

[18 Bom. 103

See HEREDITARY OFFICES ACT, s. 13.

[18 Bom. 103
[19 Bom. 250

See MAHOMEDAN LAW—KAZI.

[18 Bom. 103
[19 Bom. 50

—— of Bombay.

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

KHOTI ACT (BOMBAY ACT I OF 1865).

See BOMBAY SURVEY AND SETTLEMENT ACT.

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880).

See STATUTES, CONSTRUCTION OF.

[18 Bom. 133

—Landlord and tenant — Presumption as to nature of tenancy in absence of evidence—Payment of rent—Mortgage by tenant—Sale of tenant's interest—Rights of purchaser—Suit for possession —Transfer of tenancy in khoti village—Occupancy tenancy.] One *A*, who held certain land as tenant, mortgaged it to *H* and shortly afterwards died. There was no evidence to show the term of *A's* tenancy. After his death the plaintiff *V*, who was his brother, became tenant of the land and paid rent to the *khots*. Some years subsequently *H* (the mortgagee) sued to enforce his mortgage, and made the plaintiff *V* and his two sisters parties. He obtained a decree and sold the mortgaged land in execution. *S* bought it and now claimed possession. *V* contended that *A's* interest terminated at his death, and that *S* was therefore not entitled to possession:—*Held*, that *S* was entitled to possession. The fact that *A* had paid rent to the *khots* showed that he was their tenant. In the absence of all evidence on the subject, the presumption was that tenancy was an ordinary tenancy from year to year continuable until legally terminated. There was nothing to show that the *khots* had ever terminated it. *A's* heir could not surrender it to the prejudice of the mortgagee. *S* therefore had purchased a tenancy which had never been legally put an end to, and was entitled to possession. Under the Khoti Settlement Act (Bombay Act I of 1880) occupancy tenancies are not transferable except under certain circumstances, but there is no prohibition to the transfer of an ordinary tenancy. SONSHET ANTUSHET TELI *v.* VISHNU BABAJI JOHARI.

[20 Bom. 78

———, ss. 16 and 17.—*Entry in the Survey Settlement Officer's record, Finality of—Land Revenue Code (Bombay Act V of* 1879), *s.* 108.] The Settlement Officer's record fixing the amount of rent payable to a *khot* in respect of lands in the *khoti* village, though prepared in the form of the statement published at p. 584 of the "General Rules of the Revenue Department," edition of 1893, and labelled "*bot-khat*," cannot be treated either as a survey register under *s.* 108 of the Land Revenue Code (Bombay Act V of 1879) or a settlement register as it is called in s. 16 of Bombay Act I of 1880: it is one of the "other records" prepared under s. 17 of the latter Act. VAIDKHAN ROSHANKHAN SARGURO *v.* SAKHYA.

[20 Bom. 729

1.—s. 17.—*Entry in Survey Officer's record—Land Revenue Code (Bombay Act V of* 1879), *s.* 108 *—Evidence Act (I of* 1872), *s.* 40—*Res judicata.*] An entry of a record prepared under s. 108 of the Land Revenue Code (Bombay Act V of 1879), by the Survey Officer, describing certain lands as *khoti*, is by force of s. 17 of the Khoti Act (Bombay Act I of 1880), conclusive and final evidence of the liability thereby established, and shuts out the evidence of a prior decision otherwise relevant under s. 40 of the Evidence Act as proof of *res judicata* whereby a Civil Court adjudged the land to be *dhara*. *Gopal Krishna Parachure* v *Sakhojirav*, I. L. R. 18 Bom. 133, referred to and followed. RAMCHANDRA BHASKAR NANAL *v.* RAGHUNATH BACHASHET SONAR.

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*continued.*

[20 Bom. 475

2.—s. 17, and ss. 20 and 21.—*Entry in the Settlement Officer's record—Evidence as to amount of rent due.*] An entry in the Settlement Officer's record referred to in s. 17 of the Khoti Act (Bombay Act I of 1880) is conclusive as to the nature and amount of rent. The words "conclusive and final evidence of the liability" in s. 17 have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court. The words "when not final" in s. 21 of the Act refer to the finality ascribed in s. 17 to the entries of the nature therein mentioned, and which follow as contemplated in s. 20 on the Survey Officer arriving at his decision. GOPAL KRISHNA PARACHURE *v.* SAKHOJIRAV.

[18 Bom. 133

3.—s. 17, and ss. 16 and 33.—*Entries made by Settlement Officer in a form headed as issued under Bombay Survey and Settlement (Khoti) Act (Bombay Act I of* 1865) *when Bombay Act I of* 1880 *was in force—Finality of the entry as to the liability of the tenant—Occupancy-tenant—Jurisdiction of Civil Court.*] At a time when the Khoti Act (Bombay Act I of 1865) had been repealed and the Khoti Settlement Act (Bombay Act I of 1880) had come into operation, the Survey Officer made, in a form which was headed as being issued under Act I of 1865, entries of rent payable by the occupancy tenant to the *khot* with regard to some survey numbers of a fixed amount of grain, and with respect to one survey number as held rent-free, instead of a fixed share of the gross annual produce of the land as directed in the second para. of cl. (*c*) of s. 33 of the Khoti Settlement Act, without recording that the rent had been so fixed by agreement:—*Held*, that the entries of the rent payable by the occupancy-tenants were duly made under s. 17 of the Khoti Settlement Act, according to the provisions of s. 33 so as to make them conclusive and final evidence of the tenant's liability, which it was not open to a Civil Court to question. BALAJI RAGHUNATH *v.* BAL BIN RAGHOJI.

[21 Bom. 235

4.—s. 17, and ss. 21 and 33.—*Bombay Land Revenue Code (Bombay Act V of* 1879), *ss.* 108 *and* 110—*Entry made by Survey Officer—Conclusive and final evidence—Entry specifying the amount and nature of rent.*] Under the Khoti Act (Bombay Act I of 1880), it is only an entry of

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*concluded.*

the Survey Officer specifying the nature and amount of rent payable to the *khot* by a privileged occupant, according to the provisions of s. 33, in a record made under s. 17, that is declared to be final and conclusive evidence. An entry of a Survey Officer specifying that an occupant, who was found to be not a *dharekari* or privileged occupant, should pay assessment and local fund cess only for the lands in his possession, is not conclusive and final evidence under the Khoti Act, s. 21 declaring such decision binding only on the parties until reversed or modified by a final decree of a competent Court. KRISHNAJI NARASINVA *v.* KRISHNAJI NARAYAN JOSHI.

[21 Bom. 467

5.—ss. 17 and 33.—*Bombay Land Revenue Code (Bombay Act V of* 1879), *s.* 211—*Determination by the Settlement Officer of the liabilty of the defendant to khot—Entry in the settlement register as occupancy-tenant—Revision of the record by the Collector—Jurisdiction of Civil Court—Decision as to the rent payable—Appeal.*] In May, 1885, under s. 33 of the Khoti Settlement Act (Bombay Act I of 1880), the Survey Officer determined the liability of the defendant to pay to the *khot* as rent for his land the survey assessment and the local fund cess, and this was entered in the record made under s. 17 of the Act, notwithstanding that in the settlement register the defendant was entered as an occupancy-tenant. In April, 1889, the Collector, on the application of the plaintiff, revised the former record, which, as revised, showed that the defendant was liable to pay one-third of the produce of the land as rent to the *khot*. A question having arisen as to the legality of the revised entry by the Collector:—*Held*, that the revised entry in the record was duly made by the Collector under s. 17 of the Khoti Settlement Act, and was conclusive and final evidence of the liability established by it. It is not open to a Civil Court to inquire into the legality or otherwise of the reasons which may have led to the determination of the amount of rent payable. The Khoti Settlement Act does not make the decision of rent final. In s. 17 it only makes the entry, which is the result of the decision, final and conclusive evidence. Under s. 33 an appeal lies from a decision, and the decision can be revised under s. 211 of the Land Revenue Code (Bombay Act V of 1879) by the authorities therein mentioned. GOPAL RAMCHANDRA NAIK *v.* DASHRATHSHET.

[21 Bom. 244

6.—s. 17, and ss. 21 and 33.—*Bombay Land Revenue Code (Bombay Act V of* 1879), *s.* 108—*Decision of Survey Officer as to tenure—Power of Court to reverse or modify it.*] The decision of a Survey Officer determining the tenure on which a survey number is held is not final under the Khoti Act (Bombay Act I of 1880), and it can be reversed or modified by a competent Court. ANTAJI KASHINATH *v.* ANTAJI MADHAV BHAVE.

[21 Bom. 480

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*continued.*

7.—s. 17, and ss. 21 and 33.—*Survey register—Defendants entered by Survey authorities as occupancy-tenants—Suit by plaintiffs for reversal of Survey Officer's decision and for declaration that defendants were ordinary tenants—Decision of Survey Officer as to tenure—Right of suit—Khot holding dhara land.*] A Survey Officer under the Khoti Settlement Act (Bombay Act I of 1880) having determined and entered in the survey register that the defendants held the lands in suit as occupancy-tenants, the plaintiffs, who were the *khots* of the village, objected to the decision, and brought a suit for its reversal and to obtain a declaration that the lands were held by them on the *dhara* tenure, and that the defendants were ordinary tenants thereof. The Judge dismissed the suit in appeal, holding that the survey entry was conclusive proof of the tenant's liability, and that it gave no cause of action to the plaintiffs:—*Held*, reversing the decree, that the decision of the Survey Officer as to tenure was not final, and that a suit like the present would lie. A *khot* of a village can hold *dhara* lands. GOPAL SADASHIV PALEKAR *v.* NAGESHWAR SITARAM PHANSALKAR.

[21 Bom. 608

——, s. 20.

See **s. 17.**

[18 Bom. 133

See LIMITATION ACT, ART. 14.

[18 Bom. 244

1.—s. 20 and s. 21.—*Effect of decision of a Survey Officer as to tenure—Burden of proof.*] Section 20 of the Khoti Settlement Act (Bombay Act I of 1880) throws upon the Survey Officer the duty of investigating and determining disputes as to any matter which he is bound to record. The tenure upon which any particular survey number is held is one of such matters which he has to determine between the *khot* and its holder. His decision is, under s. 21 of the Act, binding upon the parties affected thereby until reversed or modified by a final decree of a competent Court. The burden of proof in such case lies upon the party seeking to vary the decision. MADHAVRAO APPAJI SATHE *v.* DEONAK.

[21 Bom. 695

2.—s. 20, and ss. 21 and 22.—*Jurisdiction of Civil Court—Order or act of Settlement Officer—Power of Collector.*] Under ss. 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which as provided by s. 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court. Section 21 does not contemplate any "order" being made by the Survey Officer between the parties; and even if framing the register be regarded as an "act" of the Survey Officer, s. 22 provides for its being amended by

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*concluded.*

the Collector himself, in accordance with the decision of the Civil Court. FAKI GULAM MOHIDIN *v.* SAJNAK.

[18 Bom. 244

——, s. 21.

See s. 17.

[21 Bom. 467, 480

See s. 20.

[21 Bom. 695
[18 Bom. 244

See LIMITATION ACT, ART. 14.

[18 Bom. 244

——, s. 33.

See s. 17.

[21 Bom. 235, 244, 467, 480, 608

KHOTI TENURE.

See FOREST ACT, SS. 75 AND 76.

[18 Bom. 670

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[19 Bom. 528

KIDNAPPING.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[18 All. 350
[19 All. 109

—Penal Code (Act XLV of 1860), s. 363—Continuing offence.] *Semble:* That the offence of kidnapping from lawful guardianship punishable under s. 363 of the Penal Code is not a continuing offence. QUEEN-EMPRESS *v.* RAM SUNDAR.

[19 All. 109

LACHES.

See LIMITATION ACT, S. 10.

[18 Bom. 119

See TRANSFER OF PROPERTY ACT, S. 41.

[17 All. 280

LAKHIRAJDAR.

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION, SS. 11 AND 25.

[22 Calc. 473

"LAND."

See MUNSIF, JURISDICTION OF.

[20 Mad. 21

See PRESCRIPTION—EASEMENTS—LAND.

[16 All. 178
[17 All. 87

"LAND"—*concluded.*

——, Acquisition of.

See BOMBAY MUNICIPAL ACT, 1888, S. 298.

[18 Bom. 184
[19 Bom. 407

——, Encroachment on.

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

[18 Bom. 699

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

[18 Bom. 699

——, Exchange of.

See MORTGAGE — REDEMPTION—RIGHT OF REDEMPTION.

[21 Bom. 398

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[23 Calc. 254

——, Profits of.

See PRE-EMPTION—PROFITS OF LAND.

[19 All. 261

——, Suit for.

See CASES UNDER JURISDICTION—SUITS FOR LAND.

LAND ACQUISITION ACT (X OF 1870).

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[22 Calc. 820

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[20 Mad. 269

——, s. 3.

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[17 Mad. 371

——, s. 3, and ss. 24 and 25.—*"Land"—Value of works on land used for salt factory—Exercise of jurisdiction by Judge under the Act.*] Having regard to the definition of 'land' contained in s. 3 of Act X of 1870, there is nothing illegal in a Judge taking into account the value of works on the land which make it suitable for a salt factory; and even if, in making his estimate of the market value of the land, he took into consideration the price paid for neighbouring pans, and was in error in so doing, his mistake would be only one concerning the principles of valuation, and not an irregularity in the exercise of jurisdiction. JOSEPH *v.* SALT CO.

[17 Mad. 371

LAND ACQUISITION ACT (X OF 1870) —*concluded.*

——, s. 9.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[16 All. 78

——, ss. 13 and 24.—*Lands used as public roads—Compensation—Market value of roads at date of acquisition—Time of awarding compensation.*] Where portions of land, which had been used as public roads for upwards of half a century, were taken for a public purpose under the Land Acquisition Act, 1870, for a dock:—*Held*, that assuming the plaintiffs to have made out an absolute title thereto, they were, under the Act, entitled only to compensation, and that the land, as road, had no market value within the meaning of ss. 13 and 24 of the Act, at the date of its acquisition for a public purpose. The "time of awarding compensation" in s. 24 must be construed to mean the time at which the right to compensation attaches. MANMATHA NATH MITTER *v.* SECRETARY OF STATE FOR INDIA.

[L. R. 24 I. A. 177
[25 Calc. 194

——, s. 15.—*Reference by Collector to Judge—Land in respect of which reference is made claimed by Collector on behalf of Government.*] The Collector has no power to make a reference to the District Judge under s. 15 of Act X of 1870 in cases in which he claims the land, in respect of which such reference is made, on behalf of Government, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference. *Imdad Ali Khan* v. *Collector of Farakhabad*, I. L. R. 7 All. 817, followed. CROWN BREWERY, MUSSOORIE *v.* COLLECTOR OF DEHRA DUN.

[19 All. 339

——, ss. 24 and 25.

See s. 3.

[17 Mad. 371

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.

[17 Mad. 371

——, s. 35.—*Apportionment of compensation referred to Judge—Denial by one party interested of right of another to share in compensation—Appeal.*] Under s. 35 of Act X of 1870, the fact that one of the persons concerned denies altogether the right of another of such persons to share in the compensation awarded will not prevent an appeal lying from the order of a District Judge apportioning compensation. *Kishan Lal* v. *Shankar Singh*, Weekly Notes, All. 1888, p. 170, overruled. HUSAINI BEGAM *v.* HUSAINI BEGAM.

[17 All. 573

LAND ACQUISITION ACT (I OF 1894).

See MUNSIF, JURISDICTION OF.

[20 Mad. 155

LAND ACQUISITION ACT (I OF 1894) —*concluded.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—COMPENSATION FOR ACQUISITION OF LAND.

[20 Mad. 155

——, s. 54 and s. 30.—*Award of compensation—Order for apportionment of compensation—Appeal.*] The term "award" used in s. 54, Act I of 1894, includes an order for the apportionment of compensation made under s. 30, and an appeal from such order of appointment lies to the High Court. BALARAM BHRAMARATAR RAY *v.* SHAM SUNDER NARENDRA.

[23 Calc. 526

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876).

——, ss. 38 and 78.—*Patnidar—Proprietor—Right of suit—Suit for rent.*] A *patnidar* is not a proprietor within the meaning of ss. 38 and 78 of the Land Registration Act, and he need not therefore get his name registered before suing for rent. SUKURULLAH KAZI *v.* BAMA SUNDARI DASI.

[24 Calc. 404

——, ss. 42 and 78.—*Administrator—Obligation of administrator to register his name before bringing suits for rent—Right of suit.*] A person who is an administrator, and as such the representative of a deceased proprietor of an estate and legal owner of his property, is bound to be registered under s. 42 of the Land Registration Act (Bengal Act VII of 1876) before he can sue the tenants of the estate for rent. MCINTOSH *v.* JHARU MOLLA.

[22 Calc. 454

——, s. 78.

See BENGAL TENANCY ACT, s. 95.

[22 Calc. 634

——, s. 78.—*Suit for arrears of rent—Unregistered proprietor—Bengal Tenancy Act (VIII of 1885), ss. 60, 61 and 62—Act XXVII of 1860, s. 2—Guardians and Wards Act (XL of 1858)—Succession Certificate Act (VII of 1889), s. 4—Transfer of Property Act (IV of 1882), s. 131.*] The plaintiff sued the defendants in the Calcutta Small Cause Court for arrears of rent of certain premises in Calcutta, without having previously caused his name to be registered under the Land Registration Act (Bengal Act VII of 1876), but at the first hearing he produced the certificate of registration, which he had obtained since bringing the suit. The defendants objected that the suit should be dismissed by reason of s. 78 of the Land Registration Act:—*Held* by the majority of the Full Bench, PRINSEP, NORRIS and GHOSE, JJ. (PETHERAM, C.J., and BEVERLEY, J., dissenting) that the certificate of registration having been produced when the suit came on for trial, the trial could proceed. The construction to be put on ss. 78—81 of the Land Registration Act is that

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*concluded.*

the right to the rent of an estate is in the true proprietor, although unregistered, and his right to sue for the rent is not taken away by anything in these sections of the Act, which do not affect his cause of action, but merely put an impediment in the way of his realizing the rent, until he has complied with the law by obtaining registration of his name as proprietor. The case of *Dhoronidhur Sen* v. *Wajidunnisa Khatoon*, I. L. R. 16 Calc. 708, being a mofussil case governed by, and possibly decided with regard to, the Bengal Tenancy Act (VIII of 1885), the decision of the question whether it was or not rightly decide had no bearing on a case like the present brought in the Calcutta Small Cause Court, and relating to property in Calcutta where the Bengal Tenancy Act is not applicable. *Per* NORRIS, J.—The case of *Dhoronidhur Sen* v. *Wajidunnisa Khatoon*, as reported, is wrongly decided:—*Held* by PETHERAM, C. J., and BEVERLEY, J.—On the construction of the Land Registration Act an unregistered proprietor of an estate has no cause of action on which he can institute a suit for the rent. The fact of his obtaining a certificate of registration after the institution of the suit could therefore have no effect in validating the suit brought whilst he was an unregistered proprietor. Assuming that s. 78 of the Act was applicable to the case, the suit ought to be dismissed. The case of *Dhoronidhur Sen* v. *Wajdunnissa Khatoon* was in the above view of the matter rightly decided:—*Held* by PETHERAM, C. J., and PRINSEP and PIGOT JJ., in referring the case to the Full Bench that the Land Registration Act (Bengal Act VII of 1876) is applicable to properties in Calcutta. ALIMUDDIN KHAN *v.* HIRA LALL SEN.

[23 Calc. 87

LAND TAX.

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 47.

[18 Mad. 310

LANDLORD AND TENANT.

		Col.
1.	Constitution of Relation	639
	(*a*) Generally	639
	(*b*) Acknowledgment of Tenancy by Receipt of Rent, &c.	639
2.	Obligation of Landlord to give, and maintain Tenant in, Possession	639
3.	Liability for Rent	640
4.	Payment of Rent	641
	(*a*) Non-payment	641
5.	Nature of Tenancy	642
6.	Damage to Premises Let	644
7.	Transfer by Tenant	644
8.	Property in Trees, Wood, &c.	647
9.	Accretion to Tenure	648
10.	Forfeiture	648
	(*a*) Breach of Conditions	648
	(*b*) Denial of Title	649
11.	Ejectment	650
	(*a*) Generally	650
	(*b*) Notice to Quit	650
12.	Compensation for Improvements, &c., on Land	635

LANDLORD AND TENANT—*continued.*

See ABATEMENT OF RENT.

[21 Calc 1005
[L. R. 21 I. A. 118

See CIVIL PROCEDURE CODE, S. 258.

[18 Bom. 690

See DECREE—FORM OF DECREE—POSSESSION.

18 All. 440

See EASEMENT.

[18 Mad. 320

See ESTOPPEL—DENIAL OF TITLE.

[19 Bom. 133, 133 note
[18 All. 329

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 66

See EVIDENCE ACT, S. 90.

[20 Bom. 1

See JURISDICTION — CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[19 All. 450

See JURISDICTION OF CIVIL COURT — RENT AND REVENUE SUITS, N.-W. P.

[19 All. 496

See KHOTI SETTLEMENT ACT.

[20 Bom. 78

See LIMITATION ACT, ART. 47.

[18 Bom. 348

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Bom. 348
[21 Bom. 394

See CASES UNDER MADRAS RENT RECOVERY ACT, S. 11.

See MAMLATDAR, JURISDICTION OF.

[20 Bom. 260

See POSSESSION—ADVERSE POSSESSION.

[18 Bom. 256
[21 Bom. 509

See SMALL CAUSE COURT, PRESIDENCY TOWNS — JURISDICTON — RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

See USER.

[16 All. 181

See VENDOR AND PURCHASER—NOTICE.

[19 Bom. 391

LANDLORD AND TENANT—*continued.*

(1) CONSTITUTION OF RELATION.

(*a*) GENERALLY.

1.—*Order of Settlement Officer under N.-W. P. Land Revenue Act (XIX of 1873), s. 77, determining rent—Suit for arrears of rent as so determined for a period prior to such determination.*] An order of a Settlement Officer under s. 77 of Act XIX of 1873 determining rent is a purely prospective order and will not entitle the landlord to sue his tenant for rent at the rate fixed thereby for any period antecedent to the 1st of July next following the date of such order. *Mahadeo Prasad* v. *Mathura*, I. L. R. 8 All. 189, distinguished. DEBI SINGH *v.* JHANNO KUAR.

[16 All. 209

(*b*) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT, &C.

2.—*Recognition of an under tenure by the zemindar—Result of his receiving rent in respect of it—Deposit of rent by tenure-holder under Bengal Tenancy Act (VIII of 1885), s. 61, and acceptance by zemindar.*] A widow in possession of her widow's estate in a zemindari made a grant of a *patni* tenure under it to a lessee at a rent. In this suit brought by the reversionary heir, on her death, with the object of having the grant set aside as invalid as against him, the *patni* lease was not proved to have been made with authority or from necessity justifying the alienation by the widow:—*Held*, that the *patni* was, on the death of the widow, only voidable, and not of itself void; so that the plaintiff, the next inheritor of the zemindari, might then elect to treat it as valid. The plaintiff had done so. He had accepted rent in respect of the tenure as that tenure was specified in a petition which accompanied the *patnidar's* deposit of the rent in a Court, under the Bengal Tenancy Act (VIII of 1885), s. 61. This was *primâ facie* an admission that the *patni* was still subsisting. In the absence of evidence to put a different construction upon the plaintiff's act, and to negative its effect, there was a sufficient *primâ facie* case of an election to affirm the validity of the *patni*. MODHUSUDAN SINGH *v.* ROOKE.

[25 Calc. 1

[L. R. 24 I. A. 164

(2) OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN, POSSESSION.

3.—*Disturbance by landlord of peaceable possession—Suspension and apportionment of rent.*] Where the act of a landlord is not a mere trespass, but something of a graver character, interfering substantially with the enjoyment, by the tenant, of the demised property, the tenant is entitled to a suspension of rent during such interference, even though there may not be actual eviction. If such interference be committed in respect of even of a portion of the property, there should be no apportionment of rent where the whole rent is equally chargeable upon every part of the land demised. But if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed, there should be apportionment. DHUNPUT SINGH *v.* MAHOMED KAZIM ISPAHAIN.

[24 Calc. 296

LANDLORD AND TENANT—*continued.*

(2) OBLIGATION OF LANDLORD TO GIVE, AND MAINTAIN TENANT IN, POSSESSION—*concld.*

(3) LIABILITY FOR RENT.

4.—*Liability of purchaser of khasgi (private or personal) land of a khoti sharer—Mortgage of the khoti takshim (share)—Sale in execution of a decree on the mortgage—Partition among the khoti sharers—Interest acquired by the purchaser at the execution sale—Agreement by the mortgagor to be responsible for the revenue—Agreement coming to an end with the extinction of the equity of redemption.*] *Primâ facie* all land not shown to be alienated is liable to assessment, and the mere fact that no revenue was paid by a *khoti* co-sharer in respect of *khasgi* (private or personal) land in his occupation is not sufficient to prove its exemption from liability when it has passed into the hands of a stranger. One *S.* a sharer in a *khoti* village, mortgaged his *khasgi* land appertaining to his share in the *khoti* to the plaintiff, and undertook to pay the Government dues on it. Plaintiff got a decree on his mortgage, and in execution the land was sold, and purchased by defendant in the year 1878. In the year 1881, the *khoti* sharers effected partition. In 1883, defendant took possession of the land. In 1884, and again in 1885, *S* having mortgaged his *takshim* (share), including the *khasgi* land to plaintiff, the latter as mortgagee brought a suit to recover *makta* (fixed) rent in kind payable for the *khasgi* land purchased by the defendant:—*Held*, that as the partition between the *khoti* sharers took place after the execution-sale, only the occupancy of the land was sold to the defendant, and that the plaintiff was entitled under the circumstances to recover a fair assessment:—*Held*, disallowing the defendant's contention as to exemption from payment of the rent, that the agreement by the mortgagor to be responsible for the revenue came to an end with the extinction of the equity of redemption by the Court-sale. BALKRISHNA MHADSHET *v.* VISHVANATH KESHAV JOG.

[19 Bom. 528

5.—*Suit for arrears of rent—Dispossession by landlord—Limitation — Cause of action — Mesne profits, Refund of.*] *M* having been dispossessed by the landlords from a ryoti holding purchased by him brought an action and obtained a decree for possession and mesne profits. *M* obtained delivery of possession in execution of decree in 1891, and in 1892, mesne profits for the years 1295 (1887-88) to the Bhadui season of 1299 (1891-92) were awarded to him. At the time of the ascertainment of mesne profits, the landlords claimed to set off the rent against each year's profits, but they were referred to a separate suit, and set-off was not allowed. The present suit for refund of profits or rent for the period aforesaid was brought in August, 1892, and one of the objections raised was that the claim to the rents of 1295 and 1296

LANDLORD AND TENANT—*continued.*

(3) LIABILITY FOR RENT—*concluded.*

was barred by limitation. The plaint alleged that the cause of action accrued upon the date of ascertainment of profits and the rejection of the claim to set off in 1892, and it was urged that at all events it did not accrue before delivery of possession in 1891:—*Held*, that the objection was valid, and the claim to the rents in question was barred by limitation *Swarnamayi* v. *Shashi Mukhi Barmani*, 2 B. L. R. P. C. 60; 11 W. R. P. C. 9; 12 Moo. I. A. 244; and *Din Dayal Paramanik* v. *Radhakishori Debi*, 8 B. L. R. 536; 17 W. R. 415, distinguished; *Kadumbinee Dossia* v. *Kashinath Biswas*, 13 W. R. 338, followed; *Eshan Chunder Roy* v. *Khajah Assanoollah*, 16 W. R. 79; and *Huro Pershad Roy Chowdhry* v. *Gopal Das Dutt*, L. R. 9 I. A. 82; I. L. R. 9 Calc. 255, referred to. MAHOMED MAJID *v.* MAHOMED ASHAN.

[23 Calc. 205

6.—*Suit to recover arrears of rent from representatives of tenant at fixed rates—Liability of representatives.*] *Held*, that the legal representatives of a deceased tenant at fixed rates, who had died leaving the rent payable by him in arrear, were liable for payment of the arrears to the extent of the assets of the tenant which had come into their hands, and that this liability was not affected by the question whether or not they took over the tenancy of the deceased themselves. *Lekhraj Singh* v. *Rai Singh*, I. L. R. 14 All. 381, referred to. MAHARAJA OF BENARES *v.* DALJIT SINGH.

[19 All. 352

(4) PAYMENT OF RENT.

(*a*) NON-PAYMENT.

7.—*Effect of non-payment—Acquiescence of landlord, Effect of—Subsequent suit by landlord for possession—Inam land—Sub-alienee—Wrongful surrender by the village inamdar to Government—Limitation—Remand.*] The plaintiff, a sub-alienee from an *inamdar* of certain *inam*, leased it to *D* prior to the year 1858. In 1860, the land was wrongfully surrendered by the *inamdars* of the village to Government as lapsed old service *inam*, and was made *khalsat*. In 1863, the plaintiff protested against this being done: and the Collector referred him to a civil suit against the *inamdars*. From the year 1863, the plaintiff received no rent from *D*, or after *D's* death from his heirs, who paid the assessment to Government. In 1889, the plaintiff brought the present suit against the representatives of *D* and the village *inamdars* to recover possession. The District Judge dismissed the suit on the ground that the plaintiff must be held to have acquiesced in the loss of the land, and by his conduct since 1863 must be taken to have designedly abandoned all his interest in the land, and that his suit was barred:—*Held*, that the plaintiff did not acquiesce in the surrender by the *inamdar* in 1860, to Government, as he distinctly protested against it in 1863, and that as to his conduct since 1863

LANDLORD AND TENANT—*continued.*

(4) PAYMENT OF RENT—*concluded.*

(*a*) NON-PAYMENT—*concluded.*

nothing had taken place to deprive him of such legal rights as he possessed against the tenant *D* in 1863, if they were not barred by the Statute of Limitation; and as to limitation:—*Held*, that as the District Judge had decided the point under the influence of the view taken by him as to the plaintiff's conduct, the case should be remanded for a fresh finding on that point:—*Held*, further, that the mere circumstance that *D*, after the land was treated as *khalsat*, paid assessment to Government, and had not paid rent to plaintiff, could not affect the relationship of landlord and tenant which admittedly existed between them in 1863. RAMBHAT *v.* BABABHAT.

[18 Bom. 250

8.—*Effect of non-payment of rent—Diluvion, Disappearance of land by—Subsequent reappearance of land—Relinquishment of tenancy, Evidence of—N. W. P. Rent Act (XII of 1881).*] Act XII of 1881, and the Acts of a like nature which preceded it, assume that a tenancy of agricultural lands once entered upon continues until determined by effluxion of time, or by mutual consent, or in one of the ways provided for by statutory enactment, but mere non-payment of rent does not of itself determine the tenancy. Hence where the lands of certain tenants became submerged by the action of a river, and the tenants, though they ceased to pay rent during the period of the submersion, made no overt indication of their intention to relinquish the said lands, but, on the contrary, on the river again shifting its course, laid claim to lands which had emerged, and which they alleged to be identical with their former holding; it was *held* that there had been no relinquishment. *Hemnath Dutt* v. *Ashgur Sirdar*, I. L. R. 4 Calc. 894, not followed. MAZHAR RAI *v.* RAMGAT SINGH.

[18 All. 290

(5) NATURE OF TENANCY.

9.—*Evidence of commencement and origin of tenancy—Tenancy forty years old—Bombay Land Revenue Code (Bombay Act V of 1879), s. 83.*] Section 83 of the Land Revenue Code (Bombay Act V of 1879) does not apply to a tenancy which commenced about forty years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of the tenancy. LAKSHMAN *v.* VITHU.

[18 Bom. 221

10.—*Permanent tenancy—Bombay Land Revenue Code (Bombay Act V of 1879), s. 83—Absence of local usage.*] The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure, does not prevent the application of s. 83 (1) of the Bombay Land Revenue Code (Bombay Act V of 1879), in cases where, by reason of the antiquity of the tenancy, no satisfactory evidence of its commencement is forthcoming. *G* held certain lands as a tenant under

LANDLORD AND TENANT—*continued.*

(5) NATURE OF TENANCY—*continued.*

M, an *inámdar*. The lands continued in *G's* family for nearly 80 years. It was found that owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evidence:—*Held* that, in the absence of any local usage to the contrary, *G's* tenancy must be presumed to be permanent. RAMCHANDRA NARAYAN MANTRI *v.* ANANT.

[18 Bom. 433

11.—*Presumption arising from facts of permanency of tenancy—Long possession at an unvaried rent—Admissibility in evidence of judgments in former suits.*] A zemindar claimed the proprietary right and possession of *mouzahs* within the limits of his zemindari, against tenants, who, by themselves and their predecessors in title, had held the land from before the Decennial Settlement in Bengal, an unvaried rent having been paid to the zemindar. The first defendant alleged a grant to his ancestor of a *mokurari*-tenure by a *ghatwal* then holding land within the zemindari; the other defendants alleged title as *darmokuraridars* under the first. Part of the evidence for the defence consisted of judgments, among which was one of the year 1817, and another of 1843, to which the zemindar's predecessors had not been parties. These had been given in suits brought by the successor of the *ghatwal* which had been resisted by the first defendants' ancestors, on the ground of their having had fixity of tenure:—*Held*, that they could be received as evidence of long anterior possession at a rent, and of the title, on which the defendants now relied, having been openly asserted long ago. Taken with other evidence, they established possession by the defendants at a uniform rent paid to the zemindar, thus leading to the inference that the tenure had been, and still was, of a permanent character. RAM RANJAN CHAKERBATI *v.* RAM NARAIN SINGH.

[22 Calc. 533
[L. R. 22 I. A. 60

12.—*Permanent tenancy—Lease by temple trustee—Ulavadai mirasidars—Long possession—Necessity for lease presumed.*] In 1813, the manager of a temple gave a permanent lease of one-half of certain lands to *C*, the ancestor of the defendants 1 to 14, and the other half to *N*. In 1820, *N* transferred his half share to *V*, the son of *C*. In 1831, *V*, and *S*, the ancestor of the other defendants, addressed a petition to the Collector, the then manager of the temple. In 1832 *V* and *S* executed a fresh lease and a security bond in favour of the temple, in both of which documents *V* and *S* were described as *ulavadai mirasidars*, that is, persons with an hereditary right to cultivate. There was no evidence adduced to prove for what purpose the lease of 1832 was executed, but the defendants held possession as tenants from 1832 to date of suit:—*Held*, that the words *ulavadai mirasidars* used in the deeds of 1832 as describing the tenants denoted that they were persons with hereditary right to cultivate, and that the lease was therefore of a permanent

LANDLORD AND TENANT—*continued.*

(5) NATURE OF TENANCY—*concluded.*

nature:—*Held*, also, that after the lapse of so great a period of time, the Court would presume, under the circumstances, that the original grants were made for a necessary purpose and were binding on the temple. CHOCKALINGAM PILLAI *v.* MAYANDI CHETTIAR.

[19 Mad. 485

13.—*Cultivating ryot on permanently settled estate.*] A ryot cultivating land in a permanently settled estate is *primâ facie* not a mere tenant from year to year, but the owner of the *kudivaram* right in the land he cultivates. VENKATANABASIMHA NAIDU *v.* DANDAMUDI KOTAYYA.

[20 Mad. 299

(6) DAMAGE TO PREMISES LET.

14.—*Transfer of Property Act (IV of 1882), s. 108, sub-section (e)—Lease of coffee garden—Destruction of plants by fire—Voidability of lease.*] The plaintiff was the assignee of the right and title of the lessor, and the defendant was the lessee of a coffee garden under an instrument which was held to constitute a lease of the coffee plants only. In a suit to recover the annual payment reserved under the lease, it appeared that the coffee plants had been destroyed by fire, and the garden had been consequently abandoned by the defendant before the period to which the claim related:—*Held*, that the plaintiff was not entitled to recover. KUNHAYEN HAJI *v.* MAYAN.

[17 Mad. 98

(7) TRANSFER BY TENANT.

15.—*Transfer of portion of mokurari tenure—Bengal Tenancy Act (VIII of 1885), ss. 17, 18 and 88—Rights of purchaser or transferee of tenure—Right of suit.*] There is nothing in s. 88 of the Bengal Tenancy Act to prevent a person who has purchased a share in a *mokurari* holding from bringing a suit for a declaration of his right to that share and for possession of the same after setting aside a sale held in execution of a decree for rent to which he was not made a party. Sections 17 and 18 of the Bengal Tenancy Act recognize the transfer of a share of a holding, and enable the transferee to be regarded as one of the tenants in respect of the holding. MOHESH CHUNDER GHOSE *v.* SARODA PRASAD SINGH.

[21 Calc. 433

16.—*Transfer of Property Act (IV of 1882), s. 108, cl. (j)—Transfer by lessee—Lessor's right to sue both lessee and his transferee.*] The provision in s. 108 of the Transfer of Property Act that a lessee may transfer, absolutely or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and that the lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease, does not prevent the transferee being also liable to the lessor, who may at the same time sue the lessee upon his express covenant, and the transferee upon

LANDLORD AND TENANT—*continued.*

(7) TRANSFER BY TENANT—*continued.*

the privity of estate, though he can have execution against one only. KUNHANUJAN *v.* ANJELU.

[17 Mad. 296

17.—*Mulgeni lease—Alienation by mulgenidar—Alienation contrary to the terms of the lease—Absence of any clause as to re-entry—Suit by mulgar for possession.*] In the absence of any clause for re-entry in the event of alienation by the *mulgenidar* (permanent tenant) contrary to the terms of the lease, the *mulgar* (landlord) cannot treat the alienation as void and recover possession from the alienee. NARAYAN DASAPPA *v.* ALI SAIBA.

[18 Bom. 603

18.—*N.-W. P. Rent Act (XII of* 1881), *s.* 9—*Mortgage by occupancy-tenant—Surrender of holding by heirs of mortgagor—Suit on mortgage, Sale and purchase by mortgagee—Subsequent suit by zemindar for recovery of occupancy holding.*] *A*, an occupancy-tenant to whom the second and third para. of *s.* 9 of Act XII of 1881 applied, gave a simple mortgage of his occupancy-holding to one *S*. During the continuance of the mortgage, *A* died, and his sons surrendered the occupancy-holding to the zemindar. *S* then brought a suit for sale on his mortgage, obtained a decree, had the mortgaged property sold, and purchased it himself. On suit by the zemindar, who had not been made a party to any of the previous proceedings, against *S* for recovery of the holding, it was *held* that *S* took nothing by his purchase under the decree obtained as above described, and that the zemindar was entitled to recover. SUKRU *v.* TAFAZZUL HUSAIN KHAN.

[16 All. 398

19.—*Transfer of Property Act (IV of* 1882), *s.* 108, *cl.* (*j*)—*Liability of a lessee for rent after transfer—Leases of non-agricultural character.*] To suits brought by a landlord against his lessee for rent based upon *kabuliats*, the leases being of a non-agricultural character, an assignee of the lessee was made a party defendant on his own application. It was contended on behalf of the lessee, that under the common law of India it was competent for the tenant to rid himself of his liability by assignment or at any rate by assignment and notice thereof to his landlord:—*Held*, that if there was such a common law in India enabling the tenant to put an end to his liability by transfer and notice, it did not at all events extend to leases of a non-agricultural character; and that *s.* 108, sub-section (*j*), of the Transfer of Property Act, which governed the case, must be construed without reading it as governed by, or interpreted with reference to, any such principle; and that after a transfer by the lessee and notice thereof to the landlord, the liability of the lessee would not cease, merely at his pleasure, without any act or consent on the part of the landlord. SASI BHUSHUN RAHA *v.* TARA LAL SINGH DEO.

[22 Calc. 494

LANDLORD AND TENANT—*continued.*

(7) TRANSFER BY TENANT—*continued.*

20.—*N.-W. P. Rent Act (XII of* 1881) *s.* 31—*Lease of occupancy holding — Relinquishment of holding pending term of lease.*] Where an occupancy-tenant grants a lease of land forming part of his occupancy holding for a term of years, he cannot, during the subsistence of such term, relinquish his holding to the zemindar so as to put an end to his lessee's rights under the lease. *Khiali Ram* v. *Nathu Lal*, I. L. R. 15 All. 219; *Hoolassee Ram* v. *Pursotum Lal*, 3 N.-W. 63; *Heeramonee* v. *Gunganarain Roy*, 10 W. R. 384; and *Nehalunnissa* v. *Dhunnoo Lal Chowdry*, 13 W. R. 281, referred to; *Sukru* v. *Tafazzul Husain Khan*, I. L. R. 16 All. 398, distinguished. BADRI PRASAD *v.* SHEODHIAN.

[18 All. 354

21.—*Alienation contrary to terms of lease—Absence of any clause as to re-entry—Suit for ejectment—Forfeiture.*] A clause in a lease whereby the lessee covenanted not to alienate, unaccompanied by any clause for re-entry upon breach of the covenant, *held* to be a covenant merely and not a condition, and a suit for ejectment brought by the lessor was dismissed. *Narayan Dasappa* v. *Ali Saiba*, I. L. R. 18 Bom. 603, followed. MADAR SAHEB *v.* SANNABAWA GUJRANSHAH.

[21 Bom. 195

22.—*Sub-lease—Position of sub-tenant—Privity of contract—Ejectment—Notice to quit—Bombay Land Revenue Code (Bombay Act V of* 1879), *s.* 84.] A sub-lease differs from an assignment of lease in that it creates no privity of contract between the sub-tenant and the landlord. The landlord has to deal with his lessee and not with the sub-tenants of the latter. A landlord putting an end, by proper notice, to the tenancy of his tenant thereby determines the estate of the under-tenants of the latter. TIMMAPPA KUPPAYYA *v.* RAMA VENKANNA NAIK.

[21 Bom. 311

23.—*Bengal Tenancy Act (VIII of* 1885), *ss.* 18 *and* 50—*Presumption— Occupancy ryots — Ryots holding at fixed rent—Incidents of tenancy—Transferability of tenure—Alienation of part of a tenure—Suit for khas possession and for declaration that alienation was invalid—Form of decree.*] In a suit brought in 1893 for a declaration that a holding was not transferable, and that the alienation of a portion thereof was invalid, and also for *khas* possession of the land on the ground of such alienation, it was found that the rate of rent payable for the holding had never been changed since 1831, and that there was nothing to rebut the presumption raised by *s.* 50 of the Bengal Tenancy Act (VIII of 1885):—*Held* (1) that the alienation did not work a forfeiture, and the plaintiffs were not entitled to *khas* possession, but they were entitled to the declaration that the alienation was not binding upon them; (2) that the presumption created by *s.* 50 does not operate to convert an occupancy ryot into a ryot holding at fixed rates, nor does it render the tenancy subject to the incidents of a holding at fixed rates

LANDLORD AND TENANT—*continued.*

(7) TRANSFER BY TENANT—*concluded.*

as prescribed by s. 18 of the Act. BANSI DAS *alias* RAGHU NATH DAS *v.* JAGDIP NARAIN CHOWDHRY.

[24 Calc. 152

24.—*Transfer by tenant without consent of landlord—Original tenant remaining in possession as sub-tenant of the tranferee—Abandonment of tenure—Liability to ejectment.*] Where the defendants had purchased the rights of the original tenants of certain *jote* lands, without obtaining the consent of the landlord to the transfer of the tenures, and the original tenants had remained in possession as sub-tenants of the transferees:—*Held*, that the principle laid down in *Kabil Sardar* v. *Chunder Nath Nag Chowdhry*, I. L. R. 20 Calc. 590, was not applicable, and that the landlord was entitled to a decree for ejectment against the transferees. KALLINATH CHAKRAVARTI *v.* UPENDRA CHUNDER CHOWDHRY.

[24 Calc. 212

(8) PROPERTY IN TREES, WOOD, &c.

25.—*Property in trees growing on land—Bengal Tenancy Act (VIII of 1885), s. 23—Right of occupancy tenant to cut down trees—Right of occupancy tenant to appropriate trees when cut down—Onus of proof—Custom—Suit for damages.*] The property in trees growing on land is, by the general law, vested in the proprietor of the land, subject, of course, to any custom to the contrary. Under s. 23 of the Bengal Tenancy Act, the *onus* is on the landlord to show that a tenant with occupancy right is debarred from cutting down the trees on the land, and not on the tenant to prove a custom giving him the right to do so. The right to appropriate them when cut down, however, is a different question. In a suit by landlords against their tenants who had a right of occupancy for appropriating some mango trees growing on their land which they had cut down:—*Held*, that the *onus* was rightly thrown on the tenants of proving a custom they alleged, giving them the right to sell the trees, and, on failure to prove such custom, they were liable to damages for so appropriating them. NAFAR CHANDRA PAL CHOWDHURI *v.* RAM LAL PAL.

[22 Calc. 742

26.—An occupancy tenant has a right to cut down trees unless a custom to the contrary is proved by the landlord. GRIJA NATH ROY *v.* MIA ULLA NASOYA.

[22 Calc. 744 note

NAFAR CHANDRA PAL CHOWDHRY *v.* HAZARI NATH GHOSE.

[22 Calc. 748 note

NUFFER CHUNDER GHOSE *v.* NUND LAL GOSSYAMY.

[22 Calc. 751 note

Contra PYARI LALL PAL *v.* NARAYAN MANDAL.

[27 Calc. 746 note

LANDLORD AND TENANT—*continued.*

(8) PROPERTY IN TREES, WOOD, &c.—*concld.*

where it was held that the *onus* lay on the tenant to prove a custom allowing him to cut down trees.

27.—*Trees growing on land—Lease for purpose of clearing jungle land.*] Where a lease of a *mouzah* was granted for the express purpose of clearing jungle land and bringing it under cultivation, and no reservation of the right in the trees was made in the lease:—*Held*, that the lessee had the right to appropriate the trees when cut. MON MOHINI GOOPTA *v.* RAGHOONATH MISSER.

[23 Calc. 209

28.—*Right of occupancy ryot to cut down trees—Bengal Tenancy Act (VIII of 1885), s. 23—Onus of proof—Custom—Suit for damages.*] Certain occupancy ryots were by the custom of the zemindari entitled, after obtaining the permission of the village *barua* (headman), to cut down and appropriate *agachha* (valueless) trees for fuel. No payment was ever made for such permission. The defendants, the ryots, cut down and appropriated some *agachha* trees grown upon the lands after they entered into possession. The zemindar sued the defendants for damages:—*Held* that, even if permission to cut the trees had not been given, the zemindar had in no way suffered damage, and had no cause of action:—*Held*, also, that, in such a case, the *onus* of proving the custom of the zemindari was on the zemindar. *Grija Nath Roy* v. *Mia Ulla Nasoya*, I. L. R. 22 Calc. 744 (*n*); and *Nafar Chandra Pal Chowdhuri* v. *Ram Lal Pal*, I. L. R. 22 Calc. 742, applied. SAMSAR KHAN *v.* LOCHIN DASS.

[23 Calc. 854

(9) ACCRETION TO TENURE.

29.—*Bengal Regulation XI of 1825, s. 4, cl. (1)—Occupancy right—Jote tenure—Ryot.*] A ryot who has a right of occupancy is entitled to the benefit of s. 4, cl. (1) of Regulation XI of 1825. *Gobind Monee Debia* v. *Dinobundhoo Shaha*, 15 W. R. 87; *Attimoollah* v. *Saheboollah*, 15 W. R. 149; and *Bhagabat Prasad Sing* v. *Durg Bijai Singh*, 8 B. L. R. 73; 16 W. R. 95, followed. *Finlay, Muir & Co.* v. *Gopee Kristo Gossamee*, 24 W. R. 404, not followed. GOURHARI KAIBURTO *v.* BHOLA KAIBURTO.

[21 Calc. 233

(10) FORFEITURE.

(*a*) BREACH OF CONDITIONS.

30.—*Perpetual lease granted for consideration—Clause providing for forfeiture on rent being in arrears—Whether repayment of the consideration is a condition precedent to surrender of the lands.*] Consideration paid for a lease is exhausted by the grant of the lease, and a tenant's forfeiture of the lease cannot, in the absence of a provision to that effect, operate so as to convert the original consideration into a debt which must be paid before the forfeiture can be enforced. KAMMARAN NAMBIAR *v.* CHINDAN NAMBIAR.

[18 Mad. 32

LANDLORD AND TENANT—*continued.*

(10) FORFEITURE—*continued.*

(*x*) BREACH OF CONDITIONS—*concluded.*

31.—*Assignment of lease contrary to term of lease—Waiver of forfeiture, Effect of—Damages on forfeiture for breach of covenant to repair.*] An assignment by way of mortgage of leasehold properly in terms appropriate to *fazendari* property, the lease and mesne assignments being handed over to the mortgagee on execution of the deed, and a subsequent assignment of the equity of redemption of the same property in terms appropriate to freehold property, will, in the absence of any circumstance to lead the assignees to believe that the assignor had any further interest in the property, operate as assignments of the lease. Where there is a proviso in a lease for forfeiture on assignment without previous license of the lessor, the acceptance by the lessor of rent or insurance premia from the assignee without license, or the entering into an agreement with him in respect of repairs, operates as a waiver of any and all causes of forfeiture of which the lessor is at the time aware. Where assignments of leaseholds are invalid as being in breach of a covenant not to assign without previous license and so causing forfeiture of the lease, but are valid in all other respects, on waiver of the forfeiture the assignments become operative, and those taking under them become assignees of the lease with the consent of the lessor, and are subject to all the liabilities of such assignees. The rule in *Joyner* v. *Weeks*, L. R. 1891, 2 Q. B. 31, at p. 43, that when there is a lease with a covenant to leave the premises in repair at the end of the term, and such covenant is broken, the lessee must pay what the lessor proves to be a reasonable and proper amount for putting the premises into the state of repair in which they ought to be left, applies where a term has ceased by forfeiture as well as where it has expired by efflux of time. SABAFALI TYABALI *v.* SUBRAYA BATERAYA.

[20 Bom. 439

(*b*) DENIAL OF TITLE.

32.—*Assertion of mulgeni (permanent) tenure—Right to notice to quit.*] The setting up of a *mulgeni* right by a tenant is not a disclaimer of title such as disentitles him to a notice to quit in determination of the tenure. UNHAMMA DEVI *v.* VAIKUNTA HEGDE.

[17 Mad. 218

33.—*Bombay Land Revenue Code (Bombay Act V of* 1879), *s.* 84—*Transfer of Property Act (IV of* 1882), *ss.* 111 *and* 117—*Yearly tenancy—Denial of lessor's title prior to suit—Necessity of notice to quit.*] In cases not falling under s. 117 of the Transfer of Property Act (IV of 1882), a denial of the lessor's title prior to suit is, notwithstanding s. 84 of the Land Revenue Code (Bombay Act V of 1879), a sufficient cause of action to enable the lessor to recover possession without notice to quit. The object of s. 84 of the Land Revenue Code is to define the nature of contract of tenancy; but the landlord's right of

LANDLORD AND TENANT—*continued.*

(10) FORFEITURE—*concluded.*

(*b*) DENIAL OF TITLE—*concluded.*

forfeiture arising from denial of his title is no part of the contract of tenancy, but is a right which the law implies in all cases from the relationship of landlord and tenant. If the Legislature had intended to exclude the right of forfeiture in cases of annual tenancies, there would have been express provision to that effect. VENKAJI KRISHNA NADKARNI *v.* LAKSHMAN DEVJI KANDAR.

[20 Bom. 354

34.—*Permanent lease—Transfer of Property Act (IV of* 1882), *ss.* 105, 108 *and* 111.] A lease, notwithstanding that it is permanent, is liable to forfeiture under the provisions of the Transfer of Property Act if the tenant denies the title of the landlord. Leases which are permanent, and which came into existence before the passing of the Transfer of Property Act, are governed by the general rule that a tenant who impugns his landlord's title renders his lease liable to forfeiture, which rule is only a particular application of the general principle of law that a man cannot approbate and reprobate. KALLY DASS AHIRI *v.* MONMOHINI DASSEE.

[24 Calc. 440

(11) EJECTMENT.

(*a*) GENERALLY.

35.—*Mirasi tenure—Suit by an inamdar to recover possession from a trespasser, claiming to have redeemed a mortgage made by mirasdar—Possession not adverse.*] An *inamdar* sued to eject the defendants from certain lands, alleging them to be trespassers. The Courts found that the lands were *mirasi* lands, and that one *G* was *mirasdar*. The defendants had redeemed a mortgage effected by *G* and claimed to hold possession as against the plaintiff:—*Held*, that as the land was found to belong to *G* as *mirasdar*, and as his *mirasi* tenure was still subsisting, the plaintiff as *inamdar* was not entitled to eject the defendants whether or not they had any rights as against the mortgagee. VINAYAK JANARDAN *v.* MAINAI.

[19 Bom. 138

(*b*) NOTICE TO QUIT.

36.—*Plea of permanent tenancy—Decree, Forms of.*] The plaintiff sued to eject the defendants from certain land. The defendants pleaded that they were permanent tenants under a lease granted to their ancestor by the plaintiff's grandfather in 1805. The Court of first instance awarded the plaintiff's claim. On appeal, the District Judge held that the lease on which the defendants relied was one determinable on the grantee's death, but as the grantee's heirs (the defendants) had continued in possession paying the stipulated rent, they were entitled to a reasonable notice to quit. The District Judge accordingly passed a decree, directing the defendants to vacate the land at the expiry of six months from the date of the decree:—*Held*, that the District Judge could not, in his judgment, give the notice which the plaintiff was

LANDLORD AND TENANT—*continued.*

(11) EJECTMENT—*continued.*

(*b*) NOTICE TO QUIT—*continued.*

bound to give to his tenants. Plaintiff's suit must fail for want of notice. ABU BAKAR SAIBA *v.* VENKATRAMANA VISHVESHVAR.

[18 Bom. 107

37.—*Plea of permanent tenancy—Denial of title—Forfeiture—Waiver—Objection taken in second appeal.*] The plaintiff sued the *jaghirdars* of a certain village (defendants Nos. 1 to 11) and certain of their tenants (defendants Nos. 12 to 18) for specific performance of an agreement made between the plaintiff and the *jaghirdars*, by which the *jaghirdars* agreed to give up to the plaintiff possession of certain lands, which were in possession of the tenants (defendants Nos. 12 to 18). The *jaghirdars* pleaded that they were unable to give possession, as the tenants (defendants Nos. 12 to 18) were permanent tenants and refused to quit the land. The tenants (defendants Nos. 12 to 18) put in a separate defence, also alleging that they were permanent tenants of the *jaghirdars*. The lower Appellate Court held that the tenants (defendants Nos. 12 to 18) were yearly tenants and did not hold in perpetuity, and that the *jaghirdars* had power to eject them. That Court therefore passed a decree for the plaintiff for specific performance of the agreement as against the *jaghirdars* and for possession as against the other defendants. The latter defendants (the tenants) appealed to the High Court. They there contended that if they were yearly tenants, as held by the decree of the lower Court, they could not be dispossessed without notice to quit, and that no such notice had been given:—*Held* (1) That the objection was good, and that no decree against the tenants (defendants Nos. 12 to 18) could be made in favour of the plaintiff, and that he was only entitled to a declaration that the said defendants were mere yearly and not permanent tenants. (2) That the tenants (defendants Nos. 12 to 18) had claimed to be permanent tenants before the suit was filed, and at that time they were not tenants of the plaintiff, but of the *jaghirdars*. Under the circumstances that claim could not be taken to have worked a forfeiture of their tenancy as a denial of their landlord's title, or in any case it must be deemed to have been waived by the *jaghirdars*. The plaintiff therefore could not rely upon it as an answer to the defendants' contention that a notice to quit was necessary. (3) That the objection as to the necessity of notice to quit was one which might be taken in second appeal. DODHU *v.* MADHAVRAO NARAYAN GADRE.

[18 Bom. 110

38.—*Transfer of Property Act (IV of 1882), s. 106—Denial of landlord's title by defendant prior to suit.*] In a suit by a landlord for ejectment of a tenant, no notice of determination of tenancy, under s. 106 of Act IV of 1882, is necessary where the defendant has, prior to the suit being brought, denied the plaintiff's title as landlord, and that there was any contract of tenancy between them. *Unhamma Devi* v. *Vaikunta Hegde*, I. L. R. 17 Mad. 218; and *Dodhu* v. *Maddhavrao Narayan Gadre*, I. L. R. 18 Bom. 110, referred to. HAIDRI BEGUM *v.* NATHU.

[17 All. 45

39.—*Yearly tenant—Reasonable notice to quit—Disclaimer of landlord's title in the course of pleadings—Transfer of Property Act (IV of 1882), ss. 106, 111 (b) and 116.*] The sections of the Transfer of Property Act (IV of 1882) relating to notice do not apply to suits instituted before that Act came into operation. Before that Act came into operation, a tenant other than a monthly tenant, holding over on the terms of his lease, was entitled to reasonable—that is to say, in the case of lands and in the absence of usage or stipulation to the contrary—to six months' notice to quit. Disclaimer of a landlord's title in the pleadings after suit brought does not of itself determine the tenancy and render notice to quit unnecessary. AMBABAI *v.* BHAU.

[20 Bom. 759

40.—*Tenant of agricultural land—Tenancy-at-will—Yearly tenancy—Rent not payable until the end of the year—Bombay Land Revenue Code (Bombay Act V of 1879), s. 84.*] Where, in the case of agricultural land, the tenant entered into an agreement with the landlord that he would pay the amount of the annual rent every year as long as the landlord would keep the *wadi* (*oart*) with him, and would give back the same when the landlord would demand it:—*Held*, that the contract between the parties took the case out of s. 84 of the Land Revenue Code (Bombay Act V of 1879), and that, as the rent would not be payable until the end of the year, the landlord might put an end to the tenancy and demand the land at the end of any year without giving any previous notice of any particular period, but he could not demand immediate possession in the middle of a year. BALKRISHNA VAMANAJI GAVANKAR *v.* JASHA FARSI SHIREL.

[19 Bom. 150

41.—*Tenant at will—Reasonable notice to quit.*] In a suit for ejectment brought against a tenant who had no permanent right in the holding, after a notice to quit within thirty days had been served on the tenant, the lower Appellate Court considered the notice insufficient, but gave the plaintiff a decree for possession on a certain date named in the decree:—*Held*, following the case of *Hem Chunder Ghose* v. *Radha Pershad Paleet*, 23 W. R. 440, that the suit was itself a sufficient notice to quit, and that the decree made was correct. RAM LAL PATAK *v.* DINA NATH PATAK.

[23 Calc. 200

42.—*Effect of determinating tenancy on sub-tenants—Bombay Land Revenue Code (Bombay Act V of 1879), s. 84.*] A landlord putting an end,

LANDLORD AND TENANT—*continued.*

(11) EJECTMENT—*concluded.*

(*b*) NOTICE TO QUIT—*concluded.*

by proper notice, to the tenancy of his tenant, thereby determines the estate of the under-tenants of the latter. TIMMAPPA KUPPAYYA *v.* RAMA VENKANNA NAIK.

[21 Bom. 311

43.—*Tenancy reserving an annual rent—What notice a ryot holding an annual tenancy is entitled to.*] In a tenancy created by a *kabuliat* with an annual rent reserved, a tenant is entitled to six months' notice expiring at the end of the year of the tenancy before he can be ejected. KISHORI MOHUN ROY CHOWDHRY *v.* NUND KUMAR GHOSAL.

[24 Calc. 720

(12) COMPENSATION FOR IMPROVEMENTS, &c., ON LAND.

44.—*Claim of tenant to compensation for buildings erected by him.*] A tenant of land demised to him cannot, on the termination of his tenancy, claim compensation for buildings erected by him. HUSAIN *v.* GOVARDHANDAS PARMANANDAS.

[20 Bom. 1

45.—*Buildings erected by tenant—Acquiescence by landlord—Estoppel—Presumption of grant for building purposes.*] Where a landlord had not objected to buildings erected by his tenant for a period of twenty-five years, and during that time had received rent from the tenant:—*Held*, that even if the Court were not justified in holding that the land had originally been granted for building purposes, the landlord would be precluded from ejecting the tenant without compensation. YESHWADABAI *v.* RAMCHANDRA TUKARAM.

[18 Bom. 66

46.—*Additions made by tenant to property of landlord without permission—Acquiescence of landlord—Obligation to compensate tenant—Estoppel.*] Where the lessee of a dwelling-house, being fully aware of his position as such lessee, made certain additions to the leased premises without the permission of his lessor, but apparently with his knowledge and without any interference on his part, and, subsequently, when the lessor sued to eject him for non-payment of rent, claimed compensation for such additions:—*Held*, that the lessor was entitled to recover possession from the lessee without paying him compensation. *Ramsden* v. *Dyson*, L. R. 1 H. L. 129; and *Willmott* v. *Barber*, L. R. 15 Ch. D. 96, referred to. NAUNIHAL BHAGAT *v.* RAMESHAR BHAGAT.

[16 All. 328

47.—*Buildings on land—Ownership in land and buildings—Right of tenants to compensation under the Land Acquisition Act for buildings erected by them—Transfer of Property Act (IV of 1882), s. 108, cl. (h).*] A plot of land was acquired under Act X of 1870 for the construction of a road within the town of Calcutta; the tenants,

LANDLORD AND TENANT—*continued.*

(12) COMPENSATION FOR IMPROVEMENTS, &c., ON LAND—*continued.*

who had erected masonry buildings on portions of the land, and who were in possession at the time of the acquisition, claimed before the Collector the value of their interest; but the owner of the land claiming the whole of the compensation money, the matter was referred to the District Judge, who found that the lands were originally granted for building purposes, and who allowed a share of the compensation money, *viz.*, the value of the buildings, to the tenants. On appeal to the High Court by the owner of the land, on the ground that the respondents' tenures, which were of a temporary character, having come to an end when the land was acquired by the Municipality, the buildings standing on the land became his property, and that the tenants were not entitled to compensation:—*Held*, that the Judge came to a right finding on the facts, and that the owner of the land was not entitled to the buildings erected by the tenants without being liable to pay them compensation, even if the tenancy had come to an end:—*Held*, also, that, as the land was acquired by the Corporation during the continuance of the lease, in the sense that the relationship of landlord and tenant was still subsisting between the parties, and having regard to s. 108, cl. (*h*) of the Transfer of Property Act, which applies to Calcutta as well as to the Mofussil, the tenants were entitled to the compensation for the buildings. *Juggut Mohinee Dossee* v. *Dwarka Nath Bysack*, I. L. R. 8 Calc. 582, distinguished. DUNIA LAL SEAL *v.* GOPI NATH KHETRY.

[22 Calc. 820

48.—*Lease granted by Hindu widow for long term of years—Death of widow—Voidable lease—Suit by heir to recover property from lessee six years after widow's death—Compensation for tenants' improvements—Acquiescence.*] A Hindu widow adopted a son, but reserved to herself for life the right of managing her husband's property. The adopted son sold his interest in the property to the plaintiff. In 1885, the widow granted a lease of the property to defendants for fifty-nine years at a rent of Rs. 50 a year. She died the following year (1886). The defendants continued in possession of the property under the lease and expended money in improvements. In 1892, the plaintiff as purchaser from the adopted son sued for possession:—*Held*, that he was entitled to recover and to have the lease set aside, but only on payment to the defendants of compensation for the sum properly expended by them in improving the land after the widow's death. The lease granted by the widow was not *ipso facto* void, but only voidable by the plaintiff on her death. It did not necessarily determine at her death. That being the legal position of the defendants, the plaintiff allowed the defendants to go on improving the property, and took no steps to warn the defendants until he brought this suit to recover possession. His conduct was such as to induce a belief in the minds of the defendants that the lease would be treated as valid. There was not merely a lying by, but

LANDLORD AND TENANT—*continued.*

(12) COMPENSATION FOR IMPROVEMENTS, &c., ON LAND—*continued.*

a lying by under such circumstances as to induce a belief that a voidable lease would be treated as valid. DATTAJI SAKHARAM RAJADIKSH *v.* KALBA YESE PARABHU.

[21 Bom. 749

49.—*Malabar Compensation for Tenants Improvements Act (Madras Act I of* 1887), *ss.* 3 *and* 6 *—Cocoanut trees—Valuation of improvements—Redemption of kanom tenure.*] In a suit to redeem a *kanom* in Malabar, it appeared, that the plaintiff paid into Court the *kanom* amount, together with a sum on account of the defendants' improvements, but subsequently withdrew the money, which the defendant had not taken out of Court. The defendant claimed that he was entitled to receive under the head of compensation for improvements the capitalized value of the produce of cocoanut trees planted by him computed with reference to the probable productive life of the trees:—*Held*, that the plaintiff was entitled to redeem, and that the defendant was not entitled to have the whole of the future annual produce of the trees taken into consideration in computing the value of improvements under the Malabar Compensation for Tenants Improvements Act, 1887. SHANGUNNI MENON *v.* VEERAPPAN PILLAI.

[18 Mad. 407

50.—*Malabar Compensation for Tenants Improvements Act (Madras Act I of* 1887), *s.* 3—*Suit to redeem kanom.*] The sum to be allowed for tenants' compensation for improvements under Madras Act I of 1887 is to be calculated in proportion to the extent to which the estate has been permanently improved. The improvement for which compensation is payable as defined in s. 3 of the Act is not the tree itself, but the work of planting, protecting, and maintaining it. The calculation must not be based on the future produce of the tree. KUNHI CHANDU NAMBIAR *v.* KUNKAN NAMBIAR.

[19 Mad. 384

51.—*Malabar Compensation for Tenants Improvement Act (Madras Act I of* 1887), *ss.* 6 (c), *and* 7—*Tenant's agreement in* 1890 *not to claim compensation for improvements already made—Reduction of rent—Claim to make deduction from the value of improvements on account of reduction of rent.*] In an ejectment suit relating to agricultural property in Malabar, it appeared that the tenant was in possession under an agreement executed in 1890, in which it was recited that the tenant's father had been let into possession thirty years previously at a certain rate of rent and had made improvements on the land, and the defendant agreed to hold at a lower rate of rent, and not to demand compensation for the previous improvements. The plaintiff relied on the last-mentioned provisions of the agreement which admittedly related to improvements made since January, 1886:—*Held*, that the provisions relied on by the plaintiff were invalid under the Malabar Compensation for Tenants Improvements Act, 1887,

LANDLORD AND TENANT—*concluded.*

(12) COMPENSATION FOR IMPROVEMENTS, &c., ON LAND—*concluded.*

s. 12:—*Held*, also, *per* SUBRAMANIA AYYAR, J. (DAVIES, J., *dissenting*), that there was no reduction of rent or other advantage given by the landlord to the tenant within the meaning of s. 6 (*c*), and accordingly that the plaintiff was entitled to evict only on payment of the value of improvements free from any deduction. UTHUNGANAKATH AVUTHALA *v.* THAZHATHARAYIL KUNHALI.

[20 Mad. 435

LAW, IGNORANCE OF.

See DIVORCE ACT, S. 55.

[20 Bom. 362

LAW OFFICERS, REMUNERATION OF.

See COSTS—TAXATION OF COSTS.

[17 Mad. 162

LEASE.

Col.

1. Construction ... 658

See ABATEMENT OF RENT.

[21 Calc. 1005
[L. R. 21 I. A. 118

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF ALIENATION OR DISPOSITION.

[25 Calc. 1
[L. R. 24 I. A. 164

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[19 All. 496

See CASES UNDER LANDLORD AND TENANT.

See REGISTRATION ACT, S. 17.

[17 Mad. 275
[20 Mad. 58

See REGISTRATION ACT, S. 49.

[18 Bom. 745

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[21 Calc. 702

——, Agreement to execute.

See STAMP ACT, SCH. I, ART. 4.

[17 Mad. 280

——, Agreement to renew.

See REGISTRATION ACT, S. 17.

[20 Mad. 484

——, Agricultural lease.

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[18 All. 123

LEASE—*continued.*

—— and mortgage in one document.

See STAMP ACT, S. 7.

[17 All. 55

——, Breach of contract for not executing.

See REGISTRATION ACT, S. 49.

[17 Mad. 456

——, Construction of.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION — RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

——, Counterpart of.

See STAMP ACT, SCH. II, ART. 13.

[18 Bom. 546

——, Determination of.

See MAMLATDAR, JURISDICTION OF.

[21 Bom. 738

—— for life of lessee.

See REGISTRATION ACT, S. 17.

[18 Bom. 109

——, Holding possession after expiry of.

See TRANSFER OF PROPERTY ACT, S. 68.

[16 All. 318

——, Liability under.

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS.

[19 Mad. 471

—— of tolls.

See BOMBAY TOLLS ACT, S. 7.

[20 Bom. 668

——, Proof of terms of.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE — UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 66

——, Suit on.

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

[18 Bom. 141

——, Suit to compel registration of.

See REGISTRATION ACT, S. 77.

[16 All. 303

——, Transfer of.

See STAMP ACT, SCH. I, ART. 21.

[23 Calc. 283

LEASE—*concluded.*

——, Variation of.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[24 Calc. 20

See REGISTRATION ACT, S. 18.

[24 Calc. 20

——, Zuripeshgi lease.

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[18 All. 123

See DECREE—FORM OF DECREE—POSSESSION.

[18 All. 440

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[24 Calc. 272

(1) CONSTRUCTION.

1.—*Stipulation in lease for conversion of dry land into wet land—Stipulation in accordance with local custom.*] A *pottah* is enforceable which contains a stipulation that "if *nunja* cultivation be made on *punja* land permanently converted into *nunja* with or without water of the landlord's tank, *nunja tirva* according to the rate fixed for such cultivation shall be paid," when such stipulation is in accordance with local custom. SATTAPPA PILLAI *v.* RAMAN CHETTI.

[17 Mad. 1

2.—*Transfer of Property Act (IV of 1882), s. 117—Agricultural lease—Lease of a coffee garden.*] A lease of a coffee garden is not an agricultural lease within the meaning of the Transfer of Property Act, s. 117. KUNHAYEN HAJI *v.* MAYAN.

[17 Mad. 98

LEAVE TO BID.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[18 Mad. 153

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[18 Mad. 153

——, Application for.

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[21 Bom. 331

LEAVE TO DEFEND SUIT.

See COMPENSATION—CIVIL CASES.

[18 Bom. 717

——, Application for.

See LIMITATION ACT, ART. 159.

[23 Calc. 573

LEAVE TO SUE.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
[24 Calc. 190

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.
[20 Bom. 767

See JURISDICTION — SUITS FOR LAND—GENERAL CASES.
[19 Mad. 448

See LETTERS PATENT, HIGH COURT, CL. 12.
[18 Mad. 142
[20 Bom. 767

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[21 Calc. 180,181 note
[21 Bom. 784

See RIGHT OF SUIT—CHARITIES AND TRUSTS.
[21 Bom. 257

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE —LEAVE TO SUE.
[18 Mad. 236

LEGACY, SUIT FOR.

See LIMITATION ACT, ART. 123.
[19 Mad. 425

See PROBATE—EFFECT OF PROBATE.
[18 All. 260

See SECURITY FOR COSTS—SUITS.
[21 Calc. 832

LEGAL NECESSITY.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

LEGAL PRACTITIONERS ACT (XVIII OF 1879).

——, s. 28.

See PLEADER—REMUNERATION.
[17 Mad. 306
[20 Mad. 365

——, s. 29.

See PLEADER—REMUNERATION.
[17 Mad. 306

——, s. 36.

See PLEADER — REMOVAL, SUSPENSION AND DISMISSAL.
[17 All. 498
[L. R. 22 I. A. 193

LEGATEE.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
[17 Mad. 373

LEGISLATURE.

——, Power of.

See FOREIGNERS.
[18 Bom. 636

——, Proceedings of.

See STATUTES, CONSTRUCTION OF.
[22 Calc. 1017

LEGITIMACY, PRESUMPTION OF.

See WITNESS — CIVIL CASES — PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.
[18 Bom. 468

LEPROSY.

See HINDU LAW — ENDOWMENT—SUCCESSION IN MANAGEMENT.
[22 Calc. 843
[L. R. 22 I. A. 94

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE —LEPROSY.
[19 Mad. 74

LETTERS OF ADMINISTRATION.

See CERTIFICATE OF ADMINISTRATION —RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[17 Mad. 14
[23 Calc. 912

See COMPANY—WINDING UP — DUTIES AND POWERS OF LIQUIDATORS.
[20 Bom. 654

See PRACTICE—CIVIL CASES — LETTERS OF ADMINISTRATION.
[22 Calc. 491

See RIGHT OF SUIT—INTESTACY.
[18 Bom. 337

——, Valuation for.

See COURT-FEES ACT, SCH. I, ART. 11.
[23 Calc. 577

1.—*Probate and Administration Act (V of 1881), ss. 23 and 41—Power of Court to associate another person with applicant in grant of letters of administration.*] On an application for letters of administration to which the applicant is legally entitled under s. 23 of the Probate and Administration Act, the Court has no power to order, under s. 41 of the Act, that another person who has no present interest in the estate should be

LETTERS OF ADMINISTRATION—*continued.*

associated with the applicant in the grant. Section 41 applies to a case where, for some just cause, the person who is legally entitled to letters of administration ought to be superseded, and the grant made to another person. ANNOPURNA DASI *v.* KALLAYANI DASI.

[21 Calc. 164

2.—*Grant of administration without determining title to property.*] In an application for letters of administration, *held*, on the evidence, that the deceased left property to which administration could be granted without finally determining the title to such property. MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH.

[21 Calc. 344

3.—*Probate and Administration Act (V of 1881), s. 3—Majority Act (IX of 1875), s. 3—Application by person domiciled in State of Bikanir and of age by law of that State though under 18—Disability of minority, Period of, for aliens.*] The words "any other person who has not completed his age of 18 years" in s. 3 of the Probate and Administration Act (V of 1881), read with the preamble and s. 3 of the Indian Majority Act, mean any other person not domiciled in British India. Section 3 of the Probate and Administration Act therefore fixes the limit of the period of disability for the purpose of the Act, not only for persons domiciled in British India, but for any other persons whether they be aliens or not. Where application was made by a person domiciled in the Native State of Bikanir (and who being more than 16 years of age had by the law of that State attained his majority, though he had not attained the age of 18) for letters of administration in respect of the estate of his father who had carried on business and left all his estate and effects in Calcutta:—*Held*, that the applicant not having attained the age of 18 years, the application must be refused. IN THE GOODS OF SEWNARAIN MOHATA.

[21 Calc. 911

4.—*Promissory note given to a firm consisting of two undivided Hindu brothers—Suit on note on decease of the brothers—Partner, Suit by surviving.*] Two brothers, members of an undivided Hindu family, who traded as "T. Iyavier and Brother," became the holders of a promissory note given to the firm. The elder brother having died, his son joined the firm in his place, and he and his uncle filed a suit against the maker of the note, but before the action was heard the uncle died, and his son (a minor) was substituted as plaintiff for him, suing by the other plaintiff as his next friend. The plaintiffs had not taken out letters of administration to their respective fathers' estates:—*Held* (1) that assuming that the younger brother could have sued as surviving member of the firm, on his death the necessity for taking out letters of administration could not be avoided; (2) that, if the debt was in reality due to the plaintiffs' family and not to the obligees of the bond, they could not sue upon it in their own right of survivorship without taking out letters of administration, since the promissory note did not disclose the nature of the debt, and, moreover, the other members of the family should have been joined as plaintiffs. *Venkataramanna v. Venkayya*, I. L. R. 14 Mad. 377, *distinguished*. CHOCKALINGA PILLAI *v.* NATESA AYYAR.

[17 Mad. 147

5.—*Application for letters de bonis non—Contents of petition—Succession Act (X of 1865), s. 269—Powers of administrator.*] In an application for letters of administration *de bonis non*:—*Held*, it is not necessary to ask in the petition for leave to dispose of the property in any particular way. Section 269 of the Succession Act gives the administrator full powers in this respect. IN THE GOODS OF HEMMING.

[23 Calc. 579

6.—*Succession Act (X of 1865), s. 190—Dispute as to ownership of property.*] Certain land in dispute belonged originally to a Parsi named *D*, who died intestate. After his death, one of his brothers without taking out letters of administration sold the land to the plaintiff. The defendant claimed a right of way over this land, alleging that it was public land. He obtained an injunction from the Mamlatdar's Court, restraining the plaintiff from obstructing his alleged right of way. Thereupon the plaintiff filed a suit to set aside the Mamlatdar's order, and for a declaration that he was owner of the land, and that defendant had no right of way over it. Both the lower Courts rejected the plaintiff's claim on the ground that under s. 190 of the Succession Act (X of 1865) plaintiff could not establish his right to the land in the absence of letters of administration to the estate of *D*, the original owner:—*Held*, reversing the decrees, that s. 190 of Act X of 1865 did not apply. Neither the plaintiff nor the defendant relied as the basis of his right on the previous title of *D*. There was no question of administration. TULJARAM *v.* BAMANJI KHARSEDJI.

[19 Bom. 828

7.—*Letters of administration with will annexed—Non-acceptance of duties of executor—Refusal to take out probate—Probate and Administration Act (V of 1881), s. 18—Succession Act (X of 1865), s. 195—Acceptance or renunciation of executorship*] An executrix after being cited as provided by s. 16 of Act V of 1881 to accept or renounce her executorship, stated that she was administering the estate, but having applied for a certificate under Act VII of 1889 did not consider it necessary to take out probate:—*Held*, that this was not such an acceptance as is contemplated by s 18 of Act V of 1881, the language of which is the same as that of s. 195 of the Indian Succession Act (X of 1865), and that, on the executrix declining to prove the will, the District Judge was right in granting letters of administration with the will annexed to the sole residuary legatee. MOTIBAI *v.* KARSANDAS NARAYANDAS.

[19 Bom. 123

LETTERS PATENT, HIGH COURT, 1865.

——, cl. 12.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[24 Calc. 190

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[20 Bom. 15, 133

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[18 Bom. 290, 294
[20 Bom. 767
[L. R. 21 I. A. 13

See JURISDICTION—SUITS FOR LAND—GENERAL CASES.

[19 Mad. 448

1.—Cl. 12.—*Whether an order granting leave to sue under this clause may form the subject of an issue for trial in the suit.*] The legality of an order granting permission to institute a suit under cl. 12 of the Letters Patent may form the subject of an issue for trial in the suit so instituted. NAGAMONEY MUDALIAR *v.* JANAKIRAM MUDALIAR.

[18 Mad. 142

2.—Cl. 12.—*Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Fresh leave to sue such new defendant.*] Where a defendant is added who does not reside within the jurisdiction of the High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under cl. 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed. RAMPARTAB SAMRATHRAI *v.* FOOLIBAI.

[20 Bom. 767

3.—Cl. 12.—*Application of restrictive words of cl.* 12—*Defendant.*] The restrictive words of cl. 12 of the Letters Patent, 1865, apply to the case of a plaintiff; but there is no similar restraining provision applicable to a case where the person seeking the exercise of the Court's jurisdiction is the defendant. KISSORY MOHUN ROY *v.* KALI CHURN GHOSE.

[24 Calc. 190

——, cl. 13.

See TRANSFER OF CIVIL CASE.

[24 Calc. 183

1.—Cl. 15.—*Order refusing to stay execution of decree for costs—Civil Procedure Code* (1882), *s.* 608—*Security for costs—Costs.*] An order refusing to stay execution in the exercise of the discretion given to the Court under s. 608 of the Civil Procedure Code is not a decision which affects the merits of any question between the parties by determining a right or liability, and no appeal from such an order will lie under cl. 15 of the Letters Patent. MOHABIR PROSAD SINGH *v.* ADHIKARI KUNWAR.

[21 Calc. 473

2.—Cl. 15.—*Appeal—Provincial Small Cause Courts Act* (*IX of* 1887), *ss.* 25 *and* 27—*Order of Judge of High Court acting under rules of Court under s.* 13 *of the Charter Act* (24 *and* 25 *Vict. cap.* 101).] A petition for revision preferred under the Provincial Small Cause Courts Act, s. 25, was heard and dismissed by one of the Judges of the High Court acting under the rules of Court framed under s. 13 of the Charter Act. The petitioner preferred an appeal under the Letters Patent, cl. 15:—*Held*, that the appeal was not barred under Provincial Small Cause Courts Act, s. 27, and was maintainable. VENKATA REDDI *v.* TAYLOR.

[17 Mad. 100

3.—Cl. 15.—*Order of Criminal Court—Order by one Judge granting sanction to prosecute—Criminal Procedure Code* (1882), *s.* 195.] Where one Judge exercising the revisional jurisdiction of the High Court, in reversal of an order of a first class Magistrate, had granted sanction under the Criminal Procedure Code, s. 195, for a prosecution under the Penal Code, s. 182, an appeal was preferred from his judgment under the Letters Patent, cl. 15:—*Held*, that no appeal lay, that clause of the Letters Patent being inapplicable in cases of criminal jurisdiction. SRINIVASA AYYANGAR *v.* QUEEN-EMPRESS.

[17 Mad. 105

4.—Cl. 15.—*Order of Judge of High Court on application for re-admission of an appeal dismissed on failure to deposit costs of paper book.*] *Semble:* An appeal lies under cl. 15 of the Letters Patent from a judgment of a single Judge disposing of an application for re-admission of an appeal dismissed for failure to deposit the costs of the paper book in an appeal from an original decree. RAMHARI SAHU *v.* MADAN MOHAN MITTER.

[23 Calc. 339

5.—Cl. 15.—*Order on application under Probate and Administration Act* (*V of* 1881), *s.* 90.] An order on an application under s. 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell, is without jurisdiction, and appealable under cl. 15 of the Letters Patent. *Hurrish Chunder Chowdhry* v. *Kali Sundari Debi*, I. L. R. 9 Calc. 482, applied. IN THE GOODS OF INDRA CHANDRA SINGH; SARASWATI DASI *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[23 Calc. 580

6.—Cl. 15.—*Order of Judge of High Court on appeal against order of remand—Civil Procedure Code* (1882), *s.* 588, *cl.* 28.] There is no appeal

LETTERS PATENT, HIGH COURT, 1865—*concluded.*

under the Letters Patent, cl. 15, against an order of a single Judge passed under the Civil Procedure Code, s. 588, cl. 28. VENGANAYYAN *v.* RAMASAMI AYYAN.

[19 Mad. 422

7.—Cl. 15.—*Civil Procedure Code* (1882), *s.* 588—*Powers of Judge of High Court——Order on appeal from erroneous order of remand.*] A Judge of the High Court when hearing an appeal under the Civil Procedure Code, s. 588, against an erroneous order of remand under s. 562 may, if he thinks fit, pass a final decree in the suit instead of merely remanding the suit to the lower Appellate Court. No appeal lies against such decree under the Letters Patent, cl. 15. SANKARAN *v.* RAMAN KUTTI.

[20 Mad. 152

8.—Cl. 15.—*Order of Judge of High Court dismissing appeal from order remanding case—Appeal—Civil Procedure Code* (1882), *s.* 588.] A District Munsif having dismissed a suit on a preliminary point, the District Court on appeal made an order remanding it to him to be disposed of on the merits. Against this order an appeal was preferred to the High Court, which came on for disposal before a single Judge, who delivered judgment dismissing it:—*Held*, that no appeal lay under the Letters Patent, cl. 15, against his judgment, such right of appeal being subject to the limitations on appeals prescribed by the Code of Civil Procedure. *Achaya* v. *Ratnavelu* I. L. R. 9 Mad. 253; *In re Rajdgopal*, I. L. R. 9 Mad. 447; and *Sankaran* v. *Raman Kutti*, I. L. R. 20 Mad. 152, followed. VASUDEVA UPADYAYA *v.* VISVARAJA THIRTHASAMI.

[20 Mad. 407

——, cl. 17.

See GUARDIAN—APPOINTMENT.

[21 Calc. 206

——, cl. 18.

See INSOLVENT ACT, S. 5.

[21 Bom. 405

——, cls. 39 and 40.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—FINALITY OF DECREE OR ORDER.

[22 Calc. 928

——, cl. 44.

See INSOLVENT ACT, S. 5.

[21 Bom. 405

LETTERS PATENT, HIGH COURT, N.-W. P.

——, cl. 8.

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL.

[17 All. 498

LETTERS PATENT, HIGH COURT, N.-W. P.—*continued.*

——, cl. 10.

See REMAND—PROCEDURE ON REMAND.

[16 All. 306

1.—Cl. 10.—*Order under Civil Procedure Code* (1882), *s.* 312—*Civil Procedure Code* (1882), *ss.* 266 *and* 588—*Assignment of villages to Hindu widow in lieu of maintenance—Attachment and sale of such villages in execution of money decree—Objection by widow after sale allowed—Appeal from order allowing objection.*] Certain villages were assigned for her maintenance to a Hindu widow by members of her husband's family. These villages were subsequently attached and sold in execution of a simple money decree against the widow. After the sale had become final, the widow came forward with an objection to the attachment and sale of the assigned villages on the ground that such attachment and sale were in contravention of *s.* 266 (*l*) of the Code of Civil Procedure. The first Court disallowed this objection; but, on appeal to the High Court, the widow got a decree allowing her objection. On appeal by the decree-holder under s. 10 of the Letters Patent, it was *held* that, whether or not the widow's interest in the particular villages was capable of being attached, yet, inasmuch as the order asked for by the widow's application was practically an order under s. 312 of the Code of Civil Procedure, an appeal under cl. 10 of the Letters Patent would not lie. BANSIDHAR *v.* GULAB KUAR.

[16 All. 443

2.—Cl. 10.—*Order refusing extension of time for serving notice of appeal—Application under Companies Act* (*VI of* 1882), *s.* 169—*Discretion of Court—Judgment.*] No appeal will lie under s. 10 of the Letters Patent of the High Court of Judicature for the North-Western Provinces from an order of a single Judge of the Court refusing an application under s. 169 of Act VI of 1882 (Indian Companies Act) for extension of time for serving notice of an appeal under that Act; such order not being a judgment within the meaning of cl. 10 of the Letters Patent. *Banno Bibi* v. *Mehdi Husain*, I. L. R. 11 All. 375; *Muhammad Naimullah Khan* v. *Ihsan-ullah Khan*, I. L. R. 14 All. 226; *Kishen Pershad Panday* v. *Tilukdhari Lall*, I. L. R. 18 Calc. 183; *Lutf Ali Khan* v. *Asgur Raza*, I. L. R. 17 Calc. 455; *Hurrish Chunder Chowdry* v. *Kali Sundari Debia*, I. L. R. 9 Calc. 482; L. R. 10 I. A. 4; *Mohabir Prosad Singh* v. *Adhikari Kunwar*, I. L. R. 21 Calc. 473; *Lane* v. *Esdaile*, L. R. (1891) App. Cas. 10; *Kay* v. *Briggs*, L. R. 22 Q. B. D. 343; *The Amstil*, L. R. 2 P. D. N. S. 186; and *Ex parte Stevenson*, L. R. (1892) Q. B. D. Vol. I, 294, referred to. WALL *v.* HOWARD.

[17 All. 438

3.—Cl. 10.—*Order granting probate—Probate and Administration Act* (*V of* 1881), *ss.* 51—87—"*Decree*"—*Civil Procedure Code* (1882), *ss.* 2 *and* 591—*Appeal—Finding of fact, Power of Appellate Court as to.*] An appeal will lie under cl. 10 of the Letters Patent of the High Court of Judi-

LETTERS PATENT, HIGH COURT, N.-W. P.—*concluded.*

cature for the North-Western Provinces from the judgment of a single Judge of the Court in appeal from an order of a District Judge granting probate of a will under Chap. V of Act V of 1881; and the Bench hearing such an appeal under cl. 10 of the Letters Patent is not debarred from reconsidering the findings of fact arrived at in the judgment under appeal. UMRAO CHAND *v.* BINDRABAN CHAND.

[17 All. 475

LEX FORI.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[17 Mad. 262

LEX LOCI CONTRACTUS.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[17 Mad. 262

LIBEL.

— Defamatory statement in judicial proceeding—Privilege—Liability for damages in a civil action.] A defamatory statement made in the pleadings in an action is not absolutely privileged. *Nathji Muleshvar* v. *Lalbhai Ravidat*, I. L. R. 14 Bom. 97, dissented from. AUGADA RAM SHAHA *v.* NEMAI CHAND SHAHA.

[23 Calc. 867

LICENSE.

——, False statement in application for.

See BENGAL MUNICIPAL ACT, 1884, S. 133.

[22 Calc. 131

——, Date of taking out.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 335.

[24 Calc. 360

LIEN.

——, Enforcing or removing.

See DECLARATORY DECREE, SUIT FOR—ENFORCING OR REMOVING LIEN OR ATTACHMENT.

[17 Mad. 180

—— of attorney for costs.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[21 Calc. 85

——of banker.

See BANKERS.

[19 Mad. 234

——on property.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[22 Calc. 80

LIFE ESTATE.

See LIMITATION ACT, ART. 141.

[20 Mad. 459

LIGHT AND AIR.

See EASEMENT.

[18 Bom. 616

See INJUNCTION — SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[20 Bom. 704
[19 All. 259

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR.

[18 Bom. 474
[20 Bom. 704, 788

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

[19 All. 153

LIMITATION. *Col.*

(1) Question of Limitation ... 671

See ACCRETION.

[19 All. 238

See APPEAL—DECREES.

[23 Calc. 279, 406

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[16 All. 483

See APPEAL—ORDERS.

[21 Bom. 392

See BENGAL TENANCY ACT, SCH. III, ART. 2.

[23 Calc. 191

See BENGAL TENANCY ACT, SCH. III, ART. 3.

[24 Calc. 40

See BENGAL TENANCY ACT, SCH. III, ART. 6.

[21 Calc. 387
[22 Calc. 644

See BOMBAY MUNICIPAL ACT, 1888, S. 298.

[19 Bom. 407

See CIVIL PROCEDURE CODE, S. 230.

[18 All. 49, 482

See CIVIL PROCEDURE CODE, S. 258.

[16 All. 228
[17 All. 42
[21 Bom. 122

See CIVIL PROCEDURE CODE, S. 357.

[19 All. 144

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

[20 Bom. 654

LIMITATION—*continued.*

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—MISCELLANEOUS SUITS.
[16 All. 28, 333
[17 All. 423

See DECREE—ALTERATION OR AMENDMENT OF DECREE.
[21 Calc. 259

See DECREE—FORM OF DECREE—POSSESSION.
[18 Bom. 505

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[21 Calc. 818
[17 Mad. 67
[16 All. 390
[17 All. 106
[L. R. 22 I. A. 44
[23 Calc. 39

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.
[18 Bom. 203, 542
[23 Calc. 876
[19 Bom. 258

See EXECUTOR.
[20 Bom. 571

See HINDU LAW — CUSTOM — INHERITANCE.
[21 Bom. 110

See HINDU LAW — MAINTENANCE — RIGHT TO MAINTENANCE—GENERAL CASES.
[20 Bom. 181

See HINDU LAW — PARTITION — REQUISITES FOR PARTITION.
[20 Mad. 256
[L. R. 24 I. A. 118

See LANDLORD AND TENANT—LIABILITY FOR RENT.
[23 Calc. 205

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.
[18 Bom. 250

See MADRAS RENT RECOVERY ACT, S. 78.
[20 Mad. 449

See MADRAS REVENUE RECOVERY ACT, S. 38.
[17 Mad. 134

See MORTGAGE—REDEMPTION — RIGHT OF REDEMPTION.
[18 Bom. 755
[16 All. 65
[18 All. 455

LIMITATION—*continued.*

See N.-W. P. RENT ACT, S. 181.
[19 All. 253

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

See PARTIES — ADDING PARTIES TO SUITS—DEFENDANTS.
[24 Calc. 640

See PARTIES — PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.
[18 Mad. 33

See PARTITION—NATURE OF PROCEEDINGS.
[22 Calc. 425

See PAUPER SUIT—SUITS.
[19 Mad. 197

See PLAINT—AMENDMENT OF PLAINT.
[18 Mad. 33
[17 All. 288, 292

See POSSESSION—ADVERSE POSSESSION.
[18 Bom. 256
[16 All. 254

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT.
[18 All. 223

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[18 All. 233

See RES JUDICATA—CAUSE OF ACTION.
[23 Calc. 302

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.
[22 Calc. 244

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.
[21 Bom. 424

See SERVICE TENURE.
[18 Bom. 22

See VENDOR AND PURCHASER—CONDITIONAL SALES.
[17 All. 451

See VENDOR AND PURCHASER—NOTICE.
[19 Bom. 391

——, Question of.

See CIVIL PROCEDURE CODE, S. 258.
[21 Bom. 122

See PARTIES — ADDING PARTIES TO SUITS—DEFENDANTS.
[24 Calc. 640

LIMITATION—*concluded.*

See REVISION — CIVIL CASES — SMALL CAUSE COURT CASES.

[17 All. 422

(1) QUESTION OF LIMITATION.

—Waiver of plea of limitation — Raising plea again on appeal to High Court after abandonment throughout case—Madras Boundary Marks Act (XXVIII of 1860), *s.* 25—*Madras Boundary Marks Act Amendment Act (Madras Act II of* 1884), *s.* 9—*Suit to set aside decision of the Survey Officer.*] A suit filed on the 21st April, 1891, to set aside the decision of the Settlement Officer under the Madras Boundary Acts passed on the 15th September, 1890, was dismissed by the Munsif as being time-barred, not having been brought within six months as provided by s. 25 of Act XXVIII of 1860. This decision was reversed by the District Judge, who remanded the suit for disposal on the merits, holding that the production by the plaintiff of a copy of the judgment, dated the 25th October, 1890, raised a presumption that the suit was in time, and shifted the burden of proof to the defendant to show that an earlier copy was granted to plaintiff, or that the decision was pronounced in the plaintiff's presence. Against this remand order there was no appeal. At the rehearing, the question of limitation was not again raised, and the Munsif gave a decree on the merits. An appeal was preferred to the District Court, but no mention was made of the question of limitation. On appeal to the High Court:—*Held*, that the question of limitation had been put aside by the consent of the parties who desired to have the case decided on the merits, and that the appellant could not be allowed to fall back on this plea of limitation which he had abandoned in the Lower Courts. RANGAYYA APPA RAU *v.* NARASIMHA APPA RAU.

[19 Mad. 416

LIMITATION ACT (XIV OF 1859).

——, s. 1, cl. 15.

See LIMITATION ACT, 1877, s. 19 — ACKNOWLEDGMENT OF OTHER RIGHTS.

[18 All. 458

——, s. 1, cl. 12.

See LIMITATION ACT, 1877, ART. 141.

[19 All. 357

LIMITATION ACT (IX OF 1871).

See LIMITATION ACT, 1877, ART. 127.

[18 Bom. 197

——, Art. 46.

See LIMITATION ACT, 1877, ART. 47.

[18 Bom. 348

——, Art. 129.

See LIMITATION ACT, 1877, ART. 140.

[21 Bom. 159

LIMITATION ACT (IX OF 1871)—*concluded.*

——, Art. 142.

See LIMITATION ACT, 1877, ART. 141.

[23 Calc. 460

[19 All. 357

LIMITATION ACT (XV OF 1877).

——, s. 3.

See EASEMENT.

[23 Calc. 55

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Bom. 37

1.— s. 4.—*Date of commencement of suit—Presentation of plaint—Amendment of plaint.*] For the purposes of limitation a suit must be considered to have commenced from the date on which the plaint was originally presented, and not from the date of its amendment. PATEL MAFATLAL NARANDAS *v.* BAI PARSON.

[19 Bom. 320

2.— s. 4.—*Institution of regular suit after refusal of application for leave to sue in formâ pauperis—Civil Procedure Code* (1882), *ss.* 403 *and* 409—*Presentation of plaint.*] When an application for leave to sue as a pauper is refused, and the applicant subsequently brings a suit for the same matter on a full Court-fee, such suit dates, for the purposes of limitation, from the time of filing the plaint, and not from the date of the application for leave to sue as a pauper. *Aliter* when, leave to sue as a pauper having been granted, the applicant is dispaupered. NARAINI KUAR *v.* MAKHAN LAL.

[17 All. 526

3.— s. 4.—*Institution of suit after refusal of application for leave to sue as pauper—Extension of time granted for payment of Court-fees—Payment of fees after period of limitation for suit has expired—Presentation of plaint—Civil Procedure Code* (1882), *ss.* 409 *and* 413.] On the 2nd February, 1890, the plaintiffs applied for leave to sue *in formâ pauperis*. After investigation, the Court on the 15th July, 1890, refused leave, but, on the plaintiff's application, granted him time to pay the Court fees. He paid the fees on the 12th August, 1890. At this date the suit was barred, and the defendant pleaded limitation. The plaintiff contended that the suit should be taken as instituted at the date of his application for leave to sue as a pauper. The lower Court held the suit barred, and dismissed it:—*Held*, confirming the decree, that the plaintiff's application to sue as a pauper having been disposed of under s. 409 of the Civil Procedure Code (Act XIV of 1882), there was no proceeding pending which could be continued and kept alive by the payment of Court-fees. On the rejection of an application for leave to sue as a pauper, the only course open to the applicant is that declared in s. 413, *viz.*, to institute a suit, and the date of the institution of that

LIMITATION ACT (XV OF 1877)— *continued.*

suit for the purposes of limitation is the actual date thereof. The plaintiff could not then be regarded as a pauper, and s. 4 of the Limitation Act (XV of 1877) would have no application. KESHAV RAMCHANDRA *v.* KRISHNARAO VENKATESH.

[20 Bom. 508

4.—s. 4.—*Application for leave to sue in formâ pauperis—Subsequent payment of Court-fees as for a regular suit—Limitation Act, Art.* 104—*Civil Procedure Code* (1882), *ss.* 403 *and* 413.] *A B* applied for leave to sue as a pauper for the recovery of certain dower alleged to be due to her. Upon her right to sue as a pauper being disputed by the persons proposed by her in her application for leave to sue as a pauper as defendants to the suit, *A B* paid into Court, the Court-fee necessary for a regular suit to recover the amount claimed, and prayed that her original application might be treated as the plaint in the suit, and the suit proceeded with in the ordinary manner. In the meantime, however, the period of limitation prescribed by Art. 104 of Sch. II of Act XV of 1877 for a suit to recover deferred dower had expired:—*Held*, that limitation ran from the time of presentation of the plaint, and not from the date of application for leave to sue as a pauper: the suit was therefore barred by limitation, and that s. 5 of Act XV of 1877 could not be applied. *Skinner* v. *Orde*, I. L. R. 2 All. 241, distinguished. *Balkaran Rai* v. *Gobind Nath Tiwari*, I. L. R. 12 All. 129; *Jainti Prasad* v. *Bachu Singh*, I. L. R. 15 All. 65; and *Naraini Kuar* v. *Makhan Lal*, I. L. R. 17 All. 526, referred to. ABBASI BEGAM *v.* NANHI BEGUM.

[18 All. 206

5.—s. 4.—*Petition to appeal in formâ pauperis—Non-payment of stamp in time—Extension of time for furnishing security of costs of appeal.*] The plaintiff's suit having been dismissed for non-appearance under s. 98 of the Civil Procedure Code (Act XIV of 1882), she applied to have it restored to the list for hearing, but her application was refused on the 21st September, 1896. On the 17th October, 1896, she petitioned for leave to appeal *in formâ pauperis* against the order of the 21st September, and annexed to her petition an unstamped memorandum of appeal. On the 4th December, 1896, her petition for leave to appeal *in formâ pauperis* was rejected, and she was directed by the Court to appeal in the ordinary way if she desired to appeal. On the 11th December, 1896, she applied for further time to pay the stamp fee on the memorandum of appeal, and to deposit the usual security. The Court made no order as to the stamp fee, but gave her time to furnish security until the opening of the Court after the Christmas vacation. On the 21st December, she tendered to the officer of the Court the proper stamp, asking to have it affixed to her memorandum of appeal, but he refused on the ground that it was too late. The plaintiff therefore now applied to the Court of appeal asking that the stamp should be affixed

LIMITATION ACT (XV OF 1877)— *continued.*

and the appeal filed:—*Held*, that the application should be granted. As the Court had made no order on the 11th December as to the day on which the stamp duty should be paid, the case should be considered as if the stamp had been affixed to the memorandum of appeal on the 21st December, *i.e.*, the day on which the officer of the Court refused to receive the stamp. That being so, the memorandum of appeal should be regarded as presented on the 17th October, 1896, and consequently within the time of limitation. JUMNABAI *v.* VISSONDAS RUTTONCHUND.

[21 Bom. 576

6.—s. 4.—*Application to sue in formâ pauperis—Refusal of application—Extension of time granted for payment of Court-fee—Payment of Court-fee after period of limitation—Civil Procedure Code* (1882), *s.* 409, 410 *and* 413.] Where an application for permission to sue *in formâ pauperis* is rejected, and a full Court-fee is paid for a suit for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the Court-fee, and not at the date of presentation of the petition to sue as a pauper. Section 4 of the Limitation Act does not apply to such a case. The plaintiff, on the 26th November, 1890, applied for leave to sue *in formâ pauperis* for the recovery of immoveable property. His application was rejected in May, 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on the 28th November, 1878:—*Held*, that the suit was instituted not when the petition to sue as a pauper was presented, but only on the payment of the full Court-fee, and it was therefore barred by lapse of time. *Keshav Ramchandra* v. *Krisnarao Venkatesh*, I. L. R. 20 Bom. 508; *Naraini Kuar* v. *Makhan Lal*, I. L. R. 17 All. 526; and *Abbasi Begam* v. *Nanhi Begam*, I. L. R. 18 All. 206, followed; *Skinner* v. *Orde*, I. L. R. 2 All. 241, distinguished. AUBHOYA CHURN DEY ROY *v.* BISSESSWARI.

[24 Calc. 869

7.—s. 4.—*Civil Procedure Code* (1882), *s.* 54—*Court-Fees Act* (*VII of* 1870), *ss.* 6 *and* 28—*Presentation of plaint improperly stamped.*] A suit is not instituted, within the meaning of the explanation to s. 4 of the Limitation Act by the presentation of a document purporting to be a plaint, if that document, while not undervaluing the claim, is written on paper that does not bear the proper Court-fee. VENKATRAMAYYA *v.* KRISHNAYYA.

[20 Mad. 319

8.—s. 4.—*Gazetted holiday—Computation of time for presentation of appeal.*] In calculating the time allowed by law for the presentation of an appeal to a District Court, an appellant is entitled to deduct the last day being a gazetted

LIMITATION ACT (XV OF 1877)— *continued.*

holiday, although the District Judge held his Court on that day. BOYAMMA *v.* BALAJEE RAU.

[20 Mad. 469

——, s. 5.

See s. 4.

[18 All. 206

See s. 12.

[19 All. 342

See ART. 177.

[19 Bom. 301

1.—s. 5.—*Delay in presenting appeal—Discretionary power of Court to excuse delay—Limitation Act, s. 5A and s. 14.*] Section 5A of the Limitation Act (XV of 1877) is, like s. 14, a mandatory section, but does not exclude the discretionary power of the Court, under s. 5, to excuse delay in presenting an appeal. SHRIMANT SAGAJIRAO KHANDERAV *v.* SMITH.

[20 Bom. 736

2.—s. 5.—*Sufficient cause—Appeal, Presentation of, to wrong Court.*] The presentation of an appeal to a wrong Court under a *bonâ fide* mistake may be "sufficient cause" within the meaning of s. 5 of the Limitation Act. *Sitaram Paraji* v. *Nimba*, I. L. R. 12 Bom. 320, explained. DADABHAI JAMSETJI *v.* MANEKSHA SORABJI.

[21 Bom. 552

3.—s. 5.—*Application for review—Sufficient cause for delay in filing an appeal—Limitation Act (XV of 1877), s. 14—Deduction of time review was prosecuted without good grounds.*] Though under certain circumstances the presentation of an application for review may be considered as sufficient cause for delay in filing an appeal, the appellant is bound to satisfy the Court that such circumstances did exist in his case, and that he had sufficient cause for not presenting the appeal within the prescribed period. The plaintiff obtained a decree for possession of certain land in the Court of first instance. This decree was reversed by the Appellate Court on the 28th October, 1890. The plaintiff applied for a review of judgment of the Appellate Court on the 27th January, 1891. The petition of review was rejected on the 18th March, 1891. Thereupon the plaintiff preferred a second appeal to the High Court on the 13th April, 1891:—*Held*, that the second appeal was time-barred. The time taken in prosecuting the application for review could not be deducted in calculating the period of limitation, as the plaintiff had not shown that he had reasonable grounds for asking for a review. PUNDLIK *v.* ACHUT.

[18 Bom. 84

4.—s. 5.—*Guardian and minor—Decree against minor—Neglect of guardian to appeal—Leave to appeal granted to minor after attaining majority—Sufficient cause—Limitation Act, s. 14.*] One *J* died in 1886, and by his will directed his daughter-in-law *L* to adopt *K*, his nephew's son, and "to this lad as his inheritance" he gave the residue of his property. In a suit filed to have the will construed, a decree was passed on the 1st October, 1887, declaring (*inter alia*) that, until his adoption by *L*, *K* was not entitled to any part of the estate. *K* was then a minor and was represented in the suit by his father and guardian. No appeal was made against the decree, but the guardian and *L* began to negotiate with each other as to the sum of money which each should receive out of the testator's residuary estate as the price of giving and receiving the boy in adoption. These negotiations continued until 1890, when *L* died, and the adoption directed by the will thus became impossible. In December, 1894, *K*, alleging that he had only attained majority on the 14th of that month, applied for a review of judgment, but his application was rejected. In March, 1895, he obtained a rule *nisi* for leave to appeal against the decree of the 1st October, 1887. He submitted that the circumstances amounted to "sufficient cause" under s. 5 of the Limitation Act (XV of 1877), and that he had not unduly delayed his application after attaining full age:—*Held*, that the special circumstances did amount to "sufficient cause" under the above section, and that leave to appeal should be granted. The guardian was desirous that the adoption ordered by the decree should take place, hoping that he would obtain a large sum of money for giving the minor in adoption. His interests were therefore in conflict with those of the minor, and the interests of the latter were not sufficiently consulted in deciding whether or not to appeal against the decree. CURSANDAS NATHA *v.* LADKAVAHOO.

[20 Bom. 104

5.—s. 5.—*Sufficient cause—Civil Procedure Code (1882), s. 108—Ex-parte decree—Limitation Act, s. 14.*] In a suit for possession of certain lands, after the defendants had filed their written statements, a Commissioner was appointed to hold a local inquiry. The Commissioner having completed his inquiry, a day was fixed for the hearing of the suit, and on that date the pleaders for some of the defendants, having informed the Court that they had no instructions from their clients, and the rest of the defendants having accepted the report of the Commissioner, the suit was decreed in accordance with it on the 13th April, 1893. On the 10th May following, one of the defendants, who was not represented at the hearing of the suit, made an application under s. 108 of the Code of Civil Procedure to have the decree set aside. The Subordinate Judge, on the 30th November, 1893, rejected the application, holding that the petitioner had not only notice of the day of hearing, but he was actually present in Court on that day. The petitioner, on the 24th February, 1894, filed an appeal to the High Court against that order, and, on the 18th January, 1895, that appeal was dismissed on the merits. On the 30th March, 1895, an appeal was presented against the original decree to the High Court, and it was contended

LIMITATION ACT (XV OF 1877)—*continued.*

that, under s. 5 of the Limitation Act, sufficient cause was shown for not filing the appeal within time. It was also contended that the time during which the petitioner was prosecuting his application under s. 108 of the Code of Civil Procedure should be excluded in computing the period of limitation under s. 14 of the Limitation Act:—*Held*, that s. 14 of the Limitation Act did not apply to appeals:—*Held*, also, that this was not a case in which an application could properly be made under s. 108 of the Code of Civil Procedure. Even supposing that the decree could be called an *ex-parte* decree, the petitioner, having failed in that application on the merits, could not now be allowed to fall back upon the remedy, by way of an appeal, which was open to him at the time when the original decree was passed, and of which he did not choose to avail himself, and that this was not a sufficient cause for not presenting the appeal within time. *Balwant Singh* v. *Gumani Ram*, I. L. R. 5 All. 591; and *Sital Hari Banerjee* v. *Heera Lall Chatterjee*, I. L. R. 21 Calc. 269, referred to. ARDHA CHANDRA RAI CHOWDHRY *v.* MATANGINI DASSI.

[23 Calc. 325

6.—s. 5.—*Sufficient cause—Deduction of time appeal was prosecuted in wrong Court—Limitation Act, s.* 14.] An appellant who has preferred an appeal to the Court of the District Judge and *bonâ fide* prosecuted it, it being doubtful whether the appeal lay to the District Judge or to the High Court, is entitled to a deduction of the time during which the appeal was pending in the Court of the District Judge; such circumstances constituting a "sufficient cause" within the meaning of s. 5 of the Limitation Act. *Balwant Singh* v. *Gumani*, I. L. R. 5 All. 591, followed. BALARAM BHRAMARATAR RAY *v.* SHAM SUNDER NARENDRA.

[23 Calc. 526

7.—s. 5.—*Suit under s. 77 of Registration Act (III of* 1877)*—Filing of suit on re-opening of Court where limitation expires on a day when it is closed.*] When the period of limitation, prescribed by s. 77 of the Indian Registration Act, 1877, for suits brought under that section, expires on a day when the Court is closed, s. 5 of the Indian Limitation Act, 1877, does not apply, and the suit, if instituted on the day that the Court re-opens, is barred. APPA RAU SANAYI ASWA RAU *v.* KRISHNAMURTHI.

[20 Mad. 249

——, s. 5A.

See s. 5.

[20 Bom. 736

——, s. 7.

See ART. 91.

[19 Bom. 593

See ART. 177.

[18 Mad. 484

See LUNATIC.

[19 Bom. 135

LIMITATION ACT (XV OF 1877)—*continued.*

1.—s. 7.—*Person under disability—Minor—Application by guardian on minor's behalf.*] Where the person entitled to make an application for execution of a decree is a minor at the time from which limitation is to be reckoned, s. 7 of the Limitation Act saves the execution of the decree from being barred, and any application made by his guardian on his behalf is equally exempt from the operation of limitation. *Lolit Mohun Misser* v. *Janokynath Roy*, I. L. R. 20 Calc. 714; and *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy*, I. L. R. 1 Calc. 226, referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY.

[23 Calc. 374

2.—s. 7.—*Suit to recover immoveable family property unlawfully alienated during plaintiff's minority—Limitation Act, Sch. II, Art.* 12*—Minor, Suit by, on attaining majority to set aside alienation by father of impartible property.*] Where a suit is brought to set aside a sale of immoveable family property unlawfully alienated during the plaintiff's minority, it must be instituted within one year of the plaintiff attaining his majority under Sch. II, Art. 12 of the Limitation Act. Section 7 of that Act must be read together with each article in Sch. II, and when the period prescribed by the latter extends to three years or more and expires within three years from the date of attainment of majority, the intention is that the late minor should have the full three years. But when the period of limitation prescribed is less than three years, as in Art. 12, and the minor has that period from the date of his majority, the prescribed period is not to be enlarged to three years. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI.

[17 Mad. 316

3.—s. 7.—*Malabar law—Compromise of doubtful claims by adult members of a tarwad—Suit by junior members to rescind the compromise.*] In 1878, the senior members of a Malabar *tarwad*, in *bonâ fide* compromise of certain doubtful claims, executed an instrument conveying away certain land of the *tarwad*. In 1891, certain junior members of that *tarwad*, including several minors, sued to recover possession of the land in question. Others of the junior members of the *tarwad* had attained majority more than three years before the suit, and had not impugned the validity of the conveyance; these persons were joined as defendants. None of the plaintiffs had attained majority in 1878:—*Held*, that the suit was barred by limitation. MOIDIN KUTTI *v.* BEEVI KUTTI UMMAH.

[18 Mad. 38

4.—s. 7.—*Registration Act (III of* 1877)*, s.* 77*—Suit by infant to enforce registration—Special rule of limitation.*] The Registration Act, 1877, being a special Act complete in itself, the provisions of the Limitation Act, s. 7, do not apply to suits instituted under s. 77 for a decree directing a document to be registered:—*Held*, accordingly, that a suit by an infant to enforce the registration

LIMITATION ACT (XV OF 1877)—*continued.*

of a conveyance having been instituted more than thirty days after refusal on the part of a Registrar to register, it is barred by limitation. VEERAMMA *v.* ABBIAH.

[18 Mad. 99

5.—s. 7.—*Civil Procedure Code* (1882), *ss.* 596. 598 *and* 599—*Limitation Act* (*XV of* 1877), *Sch. II, Art.* 177—*Application to admit appeal to Privy Council—Disability by reason of minority—Deduction of time.*] In 1885, the High Court in appeal passed a decree to which a minor under the Court of Wards was a party. Having attained his majority in 1894, he sought to appeal to Her Majesty in Council and presented an appeal within six months of the date when he attained majority. On an application under Civil Procedure Code, s. 598:—*Held*, that the application was barred by limitation. THURAI RAJAH *v.* JAINILABDEEN ROWTHAN.

[18 Mad. 484

6.—s. 7.—*Joint decree, Execution of—Civil Procedure Code* (1882), *s.* 231—*Minority of joint decree-holder — Application for execution after attaining majority—Limitation Act, s.* 8, *and Art.* 179.] *G* and his two minor nephews, *S* and *D*, obtained a decree on the 1st December, 1885. *G* applied for execution on the 24th November, 1886, and died in May, 1887. *S* attained majority on the 15th December, 1891, and, on the 24th July, 1894, applied for execution, no application having been made since November, 1886:—*Held*, that the application was not barred by limitation. Under s. 231 of the Civil Procedure (Act XIV of 1882), *S* was entitled equally with the other judgment-creditors to apply for execution of the whole decree for the benefit of all the decree-holders; and as he was a minor when the decree was passed, and when the last application for execution was made, he was entitled to the benefit of s. 7 of the Limitation Act (XV of 1877), and could apply for execution within three years of attaining majority. Section 8 of the Limitation Act applies only to those cases in which the act of the joint owner is, *per se*, a valid discharge. Section 7 applies where only some of the judgment-creditors, and not all, are affected by a legal disability. GOVINDRAM *v.* TATIA.

[20 Bom. 383

——, s. 8.

See s. 7.

[20 Bom. 383

See MADRAS REVENUE RECOVERY ACT, s. 59.

[17 Mad. 189

——, s. 10.

See TRUST.

[18 Bom. 551

1.—s. 10.—*Laches—Suit against directors of company—Stale demand—Trustees.*] The plaintiff company was formed in 1864, and the company went into liquidation in 1867. In April, 1890, the present suit was filed against the defendant who had been one of the directors of the company, and it was alleged that, after the formation of the company, the defendant and his co-directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose, which was not warranted by the memorandum of association. The plaintiffs alleged that their dealings, whichwere duly set forth in their plaint, had resulted in a heavy loss to the company, and they now sought to recover from the defendant the sum of Rs. 3,37,700-13-5. There had been originally five directors of the company, but at the date of suit two of them were dead, and two had become insolvent:—*Held* (affirming the decision of PARSONS, J.) (1) that s. 10 of the Limitation Act (XV of 1877) does not apply to directors of companies, the directors not being persons in whom the property of the company is vested as contemplated by that section. (2) That in any case the staleness of the demand was a valid defence to the action, the liquidators of the company having had full knowledge of the facts since the company went into liquidation, but no suit was filed until the expiration of twenty-three years. KATHIAWAR TRADING CO. *v.* VIRCHAND DIPCHAND.

[18 Bom. 119

2.—s. 10.—*Trust—Suit by representative of settlor against trustee on failure of the object of a trust to recover the trust money for herself.*] Section 10 of Act XV of 1877 does not apply to a suit brought on failure of the object of a trust to recover for the plaintiff's own use, and not for the purposes of the trust, the trust money remaining in the hands of the trustee. *Balwant Rao* v. *Puran Mal*, I. L. R. 6 All. 1; L. R. 10 I. A. 90, followed. JASODA BIBI *v.* PARMANAND.

[16 All. 256

3.—s. 10. — *Religious endowments — Gosami muth—Grant by the head of the muth to his brother for his maintenance—Suit by a successor to recover the land.*] In 1544 a village was granted to the head of a *gosami muth* to be enjoyed from generation to generation, and the deed of grant provided that the grantee was "to improve the *muth*, maintain the charity and be happy." The office of head of the *muth* was hereditary in the grantee's family. In 1866, an *inam* title-deed was issued to the then head of the *muth*, whereby the village was confirmed to him and his successors tax-free, "to be held without interference so long as the conditions of the grant are duly fulfilled." *Yadasts* addressed by *tahsildars* to the then head of the *muth* in 1872 and 1882 were put in evidence to show what the object of the grant was. It was found, regard being had to usage, that the trusts of the institution were the upkeep of the *muth*, the feeding of pilgrims, the performance of worship, the maintenance of a watershed, and the support of the descendants of the grantee. From before 1840, it had been usual for the head of the *muth* for the time being to make grants to his brothers or younger sons for their

LIMITATION ACT (XV OF 1877)— *continued.*

maintenance. In 1842, the father of the present plaintiff, being then the head of the *muth*, granted certain lands in the village above referred to to his younger brother, the deed of grant being in terms absolute. The grantee died about thirty years before the suit, and the lands in question came into the possession of his widow (defendant No. 1) and a mortgagee from her (defendant No. 2) respectively. In 1863, the plaintiff's father placed certain other lands in possession of defendant No. 3, who paid rent therefor and received *pottahs* for some years from the plaintiff. In a suit by the plaintiff for possession of the lands in the possession of the defendants, it was pleaded, *inter alia*, that the grant of 1843 was binding on him, and that defendant No. 3 had a right of permanent occupancy:—*Held*, that s. 10 of the Limitation Act was applicable, and the suit was not barred by limitation. SATHIANAMA BHARATI *v.* SARAVANABAGI AMMAL.

[18 Mad. 266

4.—s. 10.—*Suit to set aside trusts in trust-deed and to enforce others.*] Section 10 of the Limitation Act (XV of 1877) does not save a suit brought to set aside the trusts specified in a trust deed and enforce resulting trusts not so specified. COWASJI NOWROJI POCHKHANAWALLA *v.* RUSTOMJI DOSSABHOY SETNA.

[20 Bom. 511

5.—s. 10.—*Suit between co-trustees—Injunction to restrain some of trustees from excluding others from management of temple—Breach of trust, Liability for loss occasioned by.*] The plaintiffs and defendants, together with one *S*, who died in 1884, were trustees of a temple, having been appointed by the committee under Act XX of 1863. For some years before his death *S* was left in exclusive management. Subsequently the defendants were in sole management of the temple until 1891, when the plaintiffs brought the present suit charging that the defendants had excluded them from the right of management, and claiming that they should make good sums lost to the institution by reason of breaches of trust alleged to have been committed by them. Some of the breaches of trust took place before 1884. Of the others, which took place subsequently, some consisted in improper dealings with the temple property to the detriment of the temple and to the advantage of certain relatives of the defendants. The plaintiffs also asked for an injunction to restrain the defendants from excluding them from management:—*Held* (1) that, in the absence of evidence of an absolute denial by the defendants of the plaintiffs' right to act as trustees, the suit for an injunction was not barred by limitation; (2) that the suit could not be regarded as a suit by the beneficiaries, and was not within the operation of the Limitation Act, s. 10; (3) that the suit was not maintainable in respect of breaches of trust committed in the lifetime of the deceased manager, as being to that extent barred by limitation, and also for the reason that such breaches were not more imputable to the defendants than to the plaintiffs; (4) that even if it had been proved that the community interested in the temple had sanctioned the acts of the defendants now complained of, that circumstance would not suffice to excuse the defendants; (5) that the defendants were liable to make good the loss occasioned by any breach of trust committed within six years of the date when the suit was instituted even in the absence of fraud, and that, in estimating such loss, prospective loss should be assessed. RANGA PAI *v.* BABA.

[20 Mad. 398

——, s. 12.

See ART. 177.

[19 Bom. 301

See APPEAL—ACTS—COMPANIES ACT.

[18 All. 215

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION.

[17 All. 213

1.—s. 12.—*Delay in obtaining copies of judgment for the purpose of appeal—Limitation Act (XV of 1877), Art. 170.*] In a suit for land the Court of first instance passed a decree for the plaintiff, the judgment and decree bearing date the 29th of September. Defendant, being desirous of appealing *in formâ pauperis*, applied for copies on the following day. Stamp papers were called for on the 28th of October, but were not produced by the 31st, when the application was struck off under the copyist rules. On the 6th of November, a petition was put in explaining the circumstances which prevented the stamps being produced within the period of three days, and praying for restoration of the previous application:—*Held*, that the application of the 6th of November must be considered a continuation of the former one for the purpose of computing the time allowed by the Limitation Act within which an appeal should be preferred to the District Court. RAMANUJA AYYANGAR *v.* NARAYANA AYYANGAR.

[18 Mad. 374

2.—s. 12.—*Exclusion of time requisite for obtaining copies of the decree and judgment—Delay in presentation of appeal owing to Court being closed—Limitation Act, s. 5, and Art. 152.*] If the period prescribed by the second schedule of the Indian Limitation Act, 1877, for the presentation of an appeal expires on a day on which the Court is closed, and if the appellant has not obtained copies of the decree and judgment before the closing of the Court and applies for such copies on the date of the re-opening of the Court, whilst his right of appeal is still alive, he is entitled to the benefit of the time requisite for obtaining the copies, and if his appeal be presented before the expiry of that time, it is not barred by limitation. A decree was passed against a defendant by the Court of a Munsif on the 17th of September, 1894. The Appellate Court (Subordinate Judge's Court) was closed from the 6th of October to the

LIMITATION ACT (XV OF 1877)— *continued.*

4th of November, both days inclusive. On the 5th of November, the defendant-appellant applied for copies of the decree and judgment. The copies were delivered to her on the 6th November, and on the same day she presented her appeal to the Appellate Court:—*Held*, that the appeal was within time. SIYADAT-UN-NISSA *v.* MUHAMMAD MAHMUD.

[19 All. 342

3.—s. 12.—*Madras Rent Recovery Act (Madras Act VIII of 1865), ss. 18 and 69—Deduction of time occupied in obtaining copy of judgment appealed against.*] A tenant whose property had been distrained for arrears of rent sued under the Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against should be deducted in the computation of the thirty days' period of limitation:—*Held*, that the appellant was not entitled to have the deduction made, the provisions of s. 12 of the Limitation Act not being applicable to an appeal filed under s. 69 of the Madras Rent Recovery Act, and that the appeal was barred by limitation. KUMARA AKKAPPA NAYANIM *v.* SITHALA NAIDU.

[20 Mad. 476

——, s. 14.

See s. 5.

[18 Bom. 84

[20 Bom. 104, 736

[23 Calc. 325, 526

See ART. 179—STEP IN AID OF EXECUTION.

[19 Mad. 67

1.—s. 14.—*Appeal — Suit—Computation of time for appeal.*] Section 14 of the Limitation Act does not apply to the computation of time for appeals, but only to suits. ARDHA CHANDRA RAI CHOWDHRY *v.* MATANGINI DASSI.

[23 Calc. 325

2.—s. 14.—*Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Other cause of a like nature—Misjoinder of causes of action and parties.*] Where a previous suit by the same plaintiff against the same defendant has failed by reason of misjoinder of causes of action and parties, the plaintiff in a second suit is not entitled to the extra period of limitation allowed by s. 14 of the Limitation Act, since the cause of failure of the previous suit is not due to 'defect of jurisdiction' in the Court which entertained the suit, nor is it a cause "of a like nature" thereto. *Deo Prosad Singh* v. *Pertab Kairee*, I. L. R. 10 Calc. 86, dissented from. TIRTHA SAMI *v.* SESHAGIRI PAI.

[17 Mad. 299

LIMITATION ACT (XV OF 1877)— *continued.*

3.—s. 14.—*Decree passed by Mamlatdar in possessory suit—Execution of decree stayed by proceedings in Subordinate Judge's Court—Suit in Subordinate Judge's Court ultimately dismissed—Subsequent application to Mamlatdar for execution of decree—Jurisdiction of Mamlatdar to grant order for execution—Deduction of time spent on proceedings in second suit.*] A Mamlatdar having in a possessory suit passed a decree awarding possession of certain land to the applicant, the opponents instituted a suit in the Court of the first class Subordinate Judge for a declaration that the land in question was their property, and for an injunction to restrain the applicant from obstructing them in the enjoyment of their rights. Owing to this suit, the Subordinate Judge stayed execution of the Mamlatdar's decree. The opponents' suit was subsequently dismissed by the Subordinate Judge, whose decree was ultimately confirmed by the High Court in second appeal. The applicant then applied to the Mamlatdar for the execution of his decree in the possessory suit. The Mamlatdar rejected the application, on the ground that that decree of the High Court in the civil suit prevented him from executing his decree:—*Held*, that the applicant was entitled to obtain from the Mamlatdar an order for the execution of his decree, unless it was barred by limitation. It was not barred, inasmuch as in computing the period of limitation allowance was to be made for the time during which the decree remained in abeyance by reason of the proceedings in the other suit. Section 14 of the Limitation Act (XV of 1877) applies to proceedings in execution. *Hira Lal* v. *Badri Das*, I. L. R. 2 All. 792; L. R. 7 I. A. 167. NAVALCHAND NEMCHAND *v.* AMICHAND TALAKCHAND.

[18 Bom. 734

4.—s. 14.—*Suit on hundi payable at fixed date—Deduction of time former suit prosecuted in Court without jurisdiction.*] On the 14th April, 1889, the defendant at Gwalior drew a *hundi* for Rs. 2,500 on his firm at Bombay in favour of *D*, payable forty-five days after date. It was subsequently indorsed at Gwalior by *D* to the plaintiff at Cawnpore who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June, 1889, but, on the 23rd April, 1889, the bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. On the 16th June, 1891, the plaintiff filed a suit upon the *hundi* against the defendant at Cawnpore, but, on the 18th March, 1893, the plaint was returned to him, the Court holding that it had no jurisdiction. On the 16th April, 1893, the plaintiff filed this suit in the High Court of Bombay. The defendant contended that the suit was barred by limitation:—*Held*, that the suit was not barred by limitation, the plaintiff being entitled to the benefit of s. 14 of the Limitation Act (XV of 1877). RAM RAVJI JAMBHEKAR *v.* PRALHADDAS SUBKARN.

[20 Bom. 133

LIMITATION ACT (XV OF 1877)—*continued.*

5.—s. 14.—*Defect of jurisdiction, "or other cause of a like nature"—Misjoinder of causes of action—Deduction of time occupied by former suit wrongly instituted.*] A Hindu widow alienated certain property belonging to the estate left by her husband, a moiety of it in favour of one party and a moiety in favour of another and died on the 22nd June, 1878. The reversionary heirs sold a share of the property, and the purchaser brought a suit for recovery of the property alienated by the widow, on the 25th April, 1890, making the reversionary heirs defendants. On the 19th June, 1890, the reversionary heirs were added as co-plaintiffs, and the suit was dismissed on the ground of misjoinder of causes of action on the 19th February, 1891. The present suit was then brought for one moiety only of the property on the 23rd February, 1891, and deduction of the time taken up by the previous proceeding was claimed:—*Held*, that when a suit is instituted upon distinct causes of action against different sets of defendants severally, the Court may fairly be said to be "unable to entertain it" from a cause of a "like nature" with defect of jurisdiction:—*Held*, also, that s. 14 of the Limitation Act (XV of 1877) applied to this case, and that the plaintiffs were entitled to deduct the time during which they were prosecuting the former suit, and the present suit was not barred by limitation. MULLICK KEFAIT HOSSEIN *v.* SHEO PERSHAD SINGH.

[23 Calc. 821

6.—s. 14.—*Exclusion of time of former suit without jurisdiction.*] In 1892 a suit was instituted in the Presidency Court of Small Causes against defendants not resident within the jurisdiction, the leave of the Registrar of the Court having been first obtained. Subsequently it was ruled that the Registrar was not empowered to give such leave, and the suit was dismissed. A similar suit was then instituted, the leave of the Court having been first obtained:—*Held*, that the time during which the first suit was pending should be deducted in the computation of the period of limitation applicable to the second suit. SUBBARAU NAYUDU *v.* YAGANA PANTULU.

[19 Mad. 90

7.—s. 14.—*Cause of like nature—Misjoinder of causes of action—Want of leave under Civil Procedure Code, s. 44.*] In March, 1891, the plaintiff sued the defendant to recover the sum of money due on the taking of an account between the plaintiff and the defendant, who was his agent, and to recover possession of certain land. The plaintiff did not obtain leave under the Civil Procedure Code, s. 44, for the institution of this suit, which was accordingly dismissed for misjoinder of causes of action. The plaintiff now instituted, on the 5th April, 1893, two suits, the one for the money and the other for the land:—*Held*, that the plaintiff was entitled, under the Limitation Act, s. 14, to have the time occupied in the previous proceedings deducted in the computation of the period of limitation applicable to his suit for money, which accordingly was not barred by limitation. VENKITI NAYAK *v.* MURUGAPPA CHETTI.

[20 Mad. 48

LIMITATION ACT (XV OF 1877)—*continued.*

8.—s. 14.—*Suit instituted in wrong Court—Bonâ fide mistake of law.*] Section 14 of the Limitation Act, 1877, applies to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a *bonâ fide* mistake of law. *Sitaram Paraji* v. *Nimba*, I. L. R. 12 Bom. 320; *Huro Chunder Roy* v. *Surnamoyi*, I. L. R. 13 Calc. 266; and *Krishna* v. *Chathappan*, I. L. R. 13 Mad. 269, referred to. *Ramjiwan Mal* v. *Chand Mal*, I. L. R. 10 All. 587, considered. BRIJ MOHAN DAS *v.* MANNU BIBI.

[19 All. 348

——, s. 15.—*Civil Procedure Code* (1882), *ss.* 268, 485 *and* 486—*Attachment of debt by third party—Order staying institution of suit by creditor against debtor—Right of suit.*] An attachment before judgment under s. 485, Civil Procedure Code, issued by a Court at the instance of a third party, prohibited the creditor from recovering, and the debtor from paying, the debt:—*Held*, that an order in those terms was not an order staying the institution of a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). *Shib Singh* v. *Sita Ram*, I. L. R. 13 All. 76, referred to and approved,—the same rule relating to all attachments whether before or after judgment, couched in similar terms. The person restrained from receiving payment may, nevertheless, assert his right in a suit for the money due. BETI MAHARANI *v.* COLLECTOR OF ETAWAH.

[17 All. 198
[L. R. 22 I. A. 31

——, s. 17.—*Death of partner—Subsequent recovery of asset by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account.*] In 1889 one *H*, a widow and a partner in a firm carrying on business in partnership with two persons, *viz.*, *G* and *B* (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th February, 1890, the guardian of one *K*, a minor (*H's* husband's nephew), applied to the High Court of Bombay for letters of administration to her estate, alleging that *K* was her heir and next of kin. A *caveat* was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies. The matter came on as a suit on the 19th February, 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H's* estate to issue to the Administrator-General of Bombay. Letters of administration were accordingly granted to him on the 30th March, 1894. In the meantime,

LIMITATION ACT (XV OF 1877)— *continued.*

however, *viz.*, on the 12th April, 1893, *B* (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No. 1), as surviving partners of *H's* firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July, 1893, it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August, 1893, consent decrees were passed in the above three suits for a total sum of Rs. 28,335, which was forthwith handed over to the receiver. On the 22nd April, 1894, this suit was filed by the Administrator-General of Bombay as administrator of *H* appointed as above stated. He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as *H's* partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership accounts should be taken. The second defendant (*inter alia*) pleaded that the suit was one for partnership accounts, and was barred by limitation:—*Held*, that s. 17 of the Limitation Act (XV of 1877) applied, and that under its provisions the suit was not barred. RIVETT-CARNAC *v.* GOCULDAS SOBHANMULL.

[20 Bom. 15

———, **s. 18.**—*Salt Act (XII of* 1882)—*Limitation prescribed for charging with offence—Fraud in concealing date of offence.*] The provisions of s. 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of s. 11 of the Indian Salt Act (XII of 1882) are not affected by that section. QUEEN-EMPRESS *v.* NAGESHAPPA PAI.

[20 Bom. 543

———, **s. 19.** *Col.*

1. Acknowledgment of Debts ... 687
2. Acknowledgment of other Rights ... 690

See CIVIL PROCEDURE CODE, s. 258.

[16 All. 228

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE — UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 614

[21 Bom. 201

See STAMP ACT, 1879, s. 34.

[18 Bom. 614

(1) ACKNOWLEDGMENT OF DEBTS.

1.—s. 19.—*"Signing," What amounts to—Signature.*] Certain letters admitting a debt were written by the authority of the debtor, who was a Desai. The only words, however, of the letter which were actually in his own handwriting were the words "*guru samarth*" (the exalted preceptor is strong) at the beginning of each letter, and the words "*kalave, bahut kay lihine, lobh karava hi vinanti*" (let this be known; what more need be written; keep regard; this is the representation) at the end. It was proved by evidence that this was the usual mode of signing and authenticating letters and informal documents among the class to which the defendant belonged:—*Held* that, by analogy, the writing of specified words by *desais* at the top and bottom of letters, which was shown to be the usual way, amongst persons of that class, of authenticating letters was a "signing" within s. 19 of the Limitation Act (XV of 1877), and that the letter was a valid acknowledgment. The ground upon which it is held that the mark of an illiterate debtor is a sufficient signature, is that the signing in such a manner as is usually adopted by the debtor with the view of showing that he intends to be bound by the document, renders the document effective as an acknowledgment under the section. Whether the circumstance of the debtor not signing his name, is the result of necessity as in the case of an illiterate debtor, or of custom as in the case of a class of debtors having a special status in the community, can be of no importance. GANGADHARRAO VENKATESH *v.* SHIDRAMAPA BALAPA DESAI.

[18 Bom. 586

2.—s. 19.—*Powers of sarbarakar—Authority of agent—Collector, Notice by, as acknowledgment of debt—Evidence, Admissibility of—Parol evidence.*] A debtor, since deceased, had executed a bond to his creditor. The heir of the debtor having been disqualified, and a *sarbarakar* of the estate having been appointed, the latter had executed a *mukhtarnamah* or power-of-attorney empowering an agent to act in reference to the land, and the charges thereon. The agent admitted the debt:—*Held* that, on the construction of the power given to him, authority to the agent to acknowledge a personal liability of the debtor and his heir, within the meaning of s. 19 of Act XV of 1877, could not be implied. It was doubted whether the *sarbarakar*, not having been appointed guardian of the heir, could have made such an acknowledgment herself. Another acknowledgment, a notice from the Collector, as agent for the Court of Wards, admitting the estate's indebtedness to the original holder of the bond, was relied upon. In addition to the bond-debt now in suit, another sum, due on a mortgage, was claimed by the same creditor, and the terms of the notice, would apply to either:—*Held* that, the debt referred to in the notice not having been identified with the bond-debt in suit, acknowledgment of the latter by the Collector was not established within s. 19. The oral evidence of the Collector as to his intention was not admissible to construe the notice, but accompanying circumstances might be shown and considered. BETI MAHARANI *v.* COLLECTOR OF ETAWAH.

[17 All. 198

[L. R. 22 I. A. 31

LIMITATION ACT (XV OF 1877)—*continued.*

(1) ACKNOWLEDGMENT OF DEBTS—*contd.*

3.—s. 19.—*Authority of guardian to acknowledge debt due by minor.*] A guardian has authority to acknowledge a debt on the part of the minor, provided that the debt is not barred by limitation at the date of the acknowledgment. *Chinnaya* v. *Gurunatham*, I. L. R. 5 Mad. 169, followed; *Wajibun* v. *Kadir Buksh*, I. L. R. 13 Calc. 295, disapproved. SOBHANADRI APPA RAU *v.* SRIRAMULU.

[17 Mad. 221

KAILASA PADIACHI *v.* PONNUKANNU ACHI.

[18 Mad. 456

4.—s. 19.—*Authority of guardian to acknowledge debt on behalf of minor—Agent.*] A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of s. 19 of the Limitation Act (XV of 1887). *Sobhanadri Appa Rau* v. *Sriramulu*, I. L. R. 17 Mad. 221, dissented from. RANMALSINGJI *v.* VADILAL VAKHATCHAND.

[20 Bom. 61

5.—s. 19.—*Manager of joint family—Power of manager to revive a time-barred debt.*] The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself. DINKAR *v.* APPAJI.

[20 Bom. 155

6.—s. 19.—*Petition filed on behalf of minor by Vakil accompanied by part payment of money due under decree.*] A petition filed on behalf of a minor by his Vakil, admitting liability and accompanied by part payment of the money due under a decree, was held to be an acknowledgment of liability sufficient to prevent execution being barred. *Taree Mahomed* v. *Mahomed Mabood Bux*, I. L. R. 9 Calc. 730, referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY.

[23 Calc. 374

7.—s. 19.—*Admission of liability contained in a memorandum of appeal in a different suit—Admission necessary for the pleadings in suit—Authority of Advocate or Vakil.*] An admission, made by an Advocate or duly authorised Vakil on behalf of his client in a memorandum of appeal in a case not *inter partes*, that a certain decree was a subsisting decree capable of execution, will amount to an acknowledgment within the meaning of s. 19 of Act XV of 1877 so as to give a fresh starting point to limitation for execution of such decree, provided that such admission was necessary for the purposes of the pleadings in the former case. *Sed quære*, whether such admission will have a similar effect if it was not necessary for the purposes of the suit in which it was made. *Ram Hit Rai* v. *Satgur Rai*, I. L. R. 3 All. 247, followed. HINGAN LAL *v.* MANSA RAM.

[18 All. 384

LIMITATION ACT (XV OF 1877)—*continued.*

(1) ACKNOWLEDGMENT OF DEBTS—*concld.*

8.—s. 19.—*Unstamped acknowledgment of debt—Stamp Act (I of 1879), Sch. I, Art. 1.*] An acknowledgment of a debt coming under Art. 1, Sch. I of the Stamp Act I of 1879 cannot be given in evidence for any purpose including the purpose of saving limitation. MULJI LALA *v.* LINGU MAKAJI.

[21 Bom. 201

But *see* FATEH CHAND HARCHAND *v.* KISAN.

[18 Bom. 614

9.—s. 19.—*Deposition signed by the debtor.*] To satisfy the requirements of s. 19 of the Limitation Act, an ackowledgment of a debt must amount to an acknowledgment that the debt is time when the acknowledgment is made. A due at the record made by a Judge of the evidence given by a debtor as a witness at the trial of a suit, and signed by the debtor, is a writing signed by the debtor within the meaning of s. 19 of the Limitation Act. PERIAVENKAN UDAYA TEVAR *v.* SUBRAMANIAN CHETTI; SUBRAMANIAN CHETTI *v.* PERIAVENKAN UDAYA TEVAR.

[20 Mad. 239

(2) ACKNOWLEDGMENT OF OTHER RIGHTS.

10.—s. 19.—*Limitation Act, s. 21, and Sch. II, Art. 148—Limitation Act (XIV of 1859), s. 1, cl. 15—Right of redemption of mortgage—Acknowledgment of title of mortgagor.*] *Held*, that an acknowledgment of the title of the mortgagor made by one only of two mortgagees would not avail to save the mortgagor's right of redemption being barred by limitation, where the mortgage was a joint mortgage and not capable of being redeemed piecemeal. *Bhogilal* v. *Amritlal*, I. L. R. 17 Bom. 173, referred to. DHARMA *v.* BALMAKUND.

[18 All. 458

——, s. 20.

See CIVIL PROCEDURE CODE, s. 258.

[16 All. 228

1.—s. 20.—*Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing made after period expired.*] The obligee of a registered mortgage bond, dated the 30th January, 1875, sued in February, 1891, to recover from the obligor the principal and interest remaining due thereunder. In bar of limitation the plaintiff relied on entries of part-payments from time to time in an account written by the defendant. These part-payments were made at such times as to keep alive the obligee's right of suit up to the date of the last of them. The last of these payments was made on a date which was less than six years (the period of limitation for the suit) before the date of institution of the suit, but it was not entered in the defendant's accounts until after the date when the claim would otherwise have been barred

LIMITATION ACT (XV OF 1877)— *continued.*

by limitation:—*Held*, that the provisions of the Limitation Act, s. 20, were satisfied, and that the suit was not barred by limitation. VENKATASUBBU *v.* APPUSUNDRAM.

[17 Mad. 92

2.—s. 20.—*Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Deed of assignment showing payment of rent in lieu of interest—Admissibility of deed in evidence—Registration Act (III of 1877), ss. 3 and 17.*] By a bond, dated the 15th July, 1872, *A* assigned to *B* the "*vahivat* of assessment" of certain lands belonging to him as security for a loan of Rs. 10,000. The bond provided that *B* should receive the assessment, and after making certain payments, should retain the balance in lieu of interest until the principal debt should be repaid. The bond was not registered. The assessment was duly received by *B* until April, 1887. In February, 1890, *B* filed this suit to recover the principal sum from *A* personally, relinquishing his claim against the land, as the bond was not registered. *A* pleaded limitation. *B* contended that the receipt of the assessment in lieu of interest was a payment of "interest as such" within the meaning of s. 20 of the Limitation Act (XV of 1877), and that the last of such payments having been made within three years before suit his claim was not barred:—*Held*, that the suit was barred by limitation. The assignment of the "*vahivat* of assessment" contained in the bond was an assignment of a benefit arising out of immoveable property within the meaning of ss. 17 and 3 of the Registration Act (III of 1877) or else a mortgage; and in either case the bond could not be admitted in evidence, as it was not registered. But it was only by reading the terms of the bond that the Court could gather that the assessment was to be received in lieu of interest. This would be to admit indirectly the provisions of the bond in evidence. Apart from the bond there was no evidence that the plaintiff (*B*) had been paid "interest as such" within three years of the filing of the suit by the duly authorised agents of the defendants, and the claim was therefore barred. VENKAJI BABAJI NAIK *v.* SHIDRAMAPA BALAPA DESAI.

[19 Bom. 663

3.—s. 20.—*Part-payment of principal of debt—"Person making the same"—Mode of creating new period of limitation by part-payment.*] In order to create a new period of limitation under the proviso to s. 20 of the Limitation Act (XV of 1877), the fact of part-payment of the principal of a debt must appear in the handwriting of the person making the part-payment, and not in that of any other person, however authorized. *Bhugabuth Thakur* v. *Madhub Kristo Sett*, I. L. R. 23 Calc. 553 note, overruled. MUKHI HAJI RAHMUTTULLA *v.* COVERJI BHUJA.

[23 Calc. 546

LIMITATION ACT (XV OF 1877)— *continued.*

Contra, BHUGABUTH THAKUR *v.* MADHUB KRISTO SETT.

[23 Calc. 553 note

4.—s. 20.—*Part payment of principal of debt.*] An insolvent in debt to a bank had given a promissory note for the full amount of the debt due. He also gave, by way of collateral security for the promissory note and for any future advances, a letter of lien over his stock-in-trade, &c., and undertook at the time to execute, whenever called upon to do so, an assignment of his business. This undertaking was never carried out. Two years and three months from the date of the loan, the insolvent had addressed a letter to the bank enclosing a cheque for Rs. 600, and requesting that it should be placed to the credit of the loan account:—*Held*, that the payment of Rs. 600 was a part payment, and that the *fact* of such part payment appeared in the handwriting of the insolvent within the meaning of s. 20 of the Limitation Act. IN THE MATTER OF SUMMERS.

[23 Calc. 592

5.—s. 20.—*Payment of interest on a debt—Authority of a previous guardian of a debtor remaining in management after the debtor's majority—Hindu law—Guardian.*] The mother and guardian of an infant borrowed money for his expenses and executed a bond in 1886 to secure the repayment. In a suit by the obligee in 1892, it appeared that the mother had remained in management of her son's affairs, and had paid interest on the debt after he had attained majority and less than three years before the institution of the suit:—*Held*, that the mother and guardian was a "person authorised to pay" interest on behalf of the debtor within the meaning of s. 20 of the Limitation Act, and that the suit was not barred by lapse of time. *Sobhanadri Appa Rau* v. *Sriramulu*, I. L. R. 17 Mad 221, referred to. KAILASA PADIACHI *v.* PONNUKANNU ACHI.

[18 Mad. 456

6.—s. 20.—*Payment of interest as such—Credit of interest made in accounts of defendants.*] In a suit brought by a creditor against certain persons to whom she had lent money on interest:—*Held*, that, in order to save the bar of limitation, a mere credit of interest entered in the accounts of the defendants was not a sufficient payment of "interest as such" under s. 20, Limitation Act, to save the bar. KOLLIPARA PULLAMMA *v.* MADDULA TATAYYA.

[19 Mad. 340

7.—s. 20.—*Part-payment of debt—Endorsement of hundi by debtor.*] Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the endorsement of a *hundi* to the creditor:—*Held*, that such endorsement was not sufficient within the meaning of s. 20 of Act XV of 1877 to

LIMITATION ACT (XV OF 1877)—*continued.*

give a new starting point for limitation. *Mackenzie* v. *Tiruvengadathan*, I. L. R. 9 Mad. 271, referred to. RAM CHANDAR *v.* CHANDI PRASAD.

[19 All. 307

8.—s. 20.—*Usufructuary mortgage —Right of redemption.*] The last clause of s. 20 of Act XV of 1877 does not have the effect of extending indefinitely the period within which a usufructuary mortgage must be redeemed. KALLU *v.* HALKI.

[18 All. 295

———, s. 21.

See s. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

[18 All. 458

1.—s. 22.—*Civil Procedure Code* (1882), *s.* 32—*Party to contract joined as defendant and subsequently made a plaintiff — Substitution of parties.*] Limitation Act, s. 22, is not applicable to cases where the Court of its own motion orders that a party to a contract originally joined as defendant be made a plaintiff under the Civil Procedure Code, s. 32. KHADIR MOIDEEN *v.* RAMA NAIK.

[17 Mad. 12

2.—s. 22.—*Parties changed from defendants to plaintiffs.*] The plaintiff, claiming to be entitled, together with two of the defendants, to the office of *archaka* of a temple, sued in 1889 for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved. The first named defendants were made plaintiffs in the suit more than three years after the execution of the agreement:—*Held*, that the first plaintiff was entitled to a declaration of the invalidity of the agreement, but not the others who had been joined as plaintiffs more than three years from its date. SRIRANGACHARIAR *v.* RAMASAMI AYYANGAR.

[18 Mad. 189

3.—s. 22.—*Suit by Official Liquidator—Description of plaintiff—Civil Procedure Code, s.* 53—*Amendment of plaint.*] In a suit to recover a debt to a company which had gone into liquidation, the plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and the plaint was signed and verified in the same terms. On objection taken by the defendant, the plaint was allowed to be amended, but after the period of limitation prescribed for the suit had expired, so as to read "The Himalaya Bank, Limited, in liquidation, plaintiff":—*Held*, by the Full Bench, that the plaint as originally filed was in substantial compliance with the provisions of Act VI of 1882; and that, even if it might be considered that the amendment made was necessary, such amendment did not introduce a new plaintiff into the suit so as to let in the operation of s. 22 of Act XV of 1877. *Ghulam Muhammad* v. *The Himalaya Bank*, I. L. R. 17 All. 292, overruled; *In re Winterbottom*, L. R. 18 Q. B. D. 446, distinguished. MUHAMMAD YUSUF *v.* HIMALAYA BANK.

[18 All. 198

4.—s. 22.—*Suit by heirs of deceased Mahomedan—Suit originally filed in time by one heir—Another heir subsequently made co-plaintiff beyond time of limitation—Letters of administration obtained only by second plaintiff—Parties, Joinder of.*] The plaintiff, as widow and heir of a Khoja Mahomedan, sued on a promissory note, dated the 21st October, 1892, passed by the defendant to her deceased husband. The suit was filed on the 9th October, 1895. Disputes subsequently arose between her and her father-in-law as to the succession to her husband's property, and she applied to the High Court for letters of administration. On the 9th September, 1896, the plaintiff's father-in-law, on his application, was made a co-plaintiff in the suit. Subsequently the plaintiffs came to terms, and the widow withdrew her application for letters of administration, and her father-in-law applied for and obtained letters of administration instead. On the 14th November, 1896, the suit came on for hearing. The first plaintiff did not produce any letters of administration or certificate under the Succession Certificate Act (VII of 1889). The second plaintiff produced the letters of administration obtained by him:—*Held*, that the suit was barred by s. 22 of the Limitation Act (XV of 1877). When the second plaintiff was added as a party, the suit was barred as against him. If the letters of administration had been obtained by the first plaintiff, her suit would not have been barred, and the Court could have passed a decree in her favour. Section 22 of the Limitation Act in terms applies as well to plaintiffs suing in their representative capacity as in their personal capacity:—*Held*, also, that the second plaintiff was properly joined as a party plaintiff. When one or more heirs sue, there is no objection to joining all to make the representation complete. FATMABAI *v.* PIRBHAI VIRJI.

[21 Bom. 580

———, s. 23.

See ART. 144—ADVERSE POSSESSION.

[21 Bom. 394

———, s. 25.—*Computation of time—Difference in calendars—Date from which time runs.*] A registered lease provided that the rent should be paid on 30th Masi Tharana. The month Masi in the year Tharana ended on the 29th day, which corresponded with the 11th March, 1885. A suit

LIMITATION ACT (XV OF 1877)— *continued.*

to recover the rent was filed on the 12th March, 1891:—*Held*, that the suit was not barred by limitation. GNANASAMMANDA PANDARAM *v.* PALANIYANDI PILLAI.

[17 Mad. 61

——, s. 28.

See ART. 47.

[20 Bom. 270

See ART. 144—ADVERSE POSSESSION.

[18 Bom. 507

See POSSESSION—ADVERSE POSSESSION.

[21 Bom. 509

See RES JUDICATA — JUDGMENTS ON PRELIMINARY POINTS.

[21 Bom. 91

1.—s. 28.—*Limitation in relation to persons in undisturbed possession—Delay.*] The law of limitation operates against parties who have been guilty of delay and in favour of persons in possession. Section 28 of the Limitation Act has no application to persons who are in possession, and who have had no occasion to sue for recovery of possession. ORR *v.* SUNDRA PANDIA.

[17 Mad. 255

2.—s. 28.—*Civil Procedure Code* (1882), *s.* 214—*Right of pre-emption asserted by one in possession under an otti mortgage in Malabar—Limitation Act, Sch. II, Art.* 10.] Land in Malabar was in the possession of the defendants, and was held by them as *otti* mortgagees under instruments executed in August, 1873, and January, 1876. The plaintiff having purchased the *jenm* right under instruments executed and registered in May and June, 1877, now sued in 1893 for redemption:—*Held*, that the defendants' right of pre-emption was not extinguished under Limitation Act, s. 28, and that they were not precluded from asserting it by Art. 10 owing to the lapse of time, and that the Civil Procedure Code, s. 214, was inapplicable to the case, because the persons asserting a right of pre-emption were in possession. KRISHNA MENON *v.* KESAVAN.

[20 Mad. 305

——, Sch. II, Art. 10.

See s. 28.

[20 Mad. 305

1.—Art. 11.—*Suit to set aside order removing attachment—Civil Procedure Code* (1882), *s.* 283.] A suit brought under s. 283 of the Civil Procedure Code (Act XIV of 1882) is a suit to set aside an order within the meaning of Art. 11 of Sch. II of the Limitation Act (XV of 1877). HARISHANKAR JEBHAI *v.* NARAN KARSAN.

[18 Bom. 260

LIMITATION ACT (XV OF 1877)— *continued.*

2.—Art. 11.—*Civil Procedure Code* (1882), *ss.* 278 *and* 281—*Disallowance of claim to property under attachment—Suit for property attached.*] In 1879, the plaintiff purchased at a Court-sale the first defendant's interest in certain land, but did not obtain possession. In 1888, the same property was purchased by the fourth defendant in execution of another decree against the same judgment-debtor. It appeared that the plaintiff raised an objection by petition in the course of the proceedings in execution of the last-mentioned decree, but his petition was dismissed on his Vakil stating that he was not in possession. The plaintiff now sued in 1891 for the property purchased by him:—*Held*, that no order had been passed under the Civil Procedure Code, s. 281, and that the suit was not barred under Limitation Act, Sch. II, Art. 11. MUNISAMI REDDI *v.* ARUNACHALA REDDI.

[18 Mad. 265

3.—Art. 11.—*Civil Procedure Code* (1882), *s.* 283—*Order on claim to property found not to be attached.*] Land having been granted to several persons jointly, disputes arose among them with reference to its allotment. The disputes having been settled by arbitration, one of the grantees sold his share to the plaintiff. Before the arbitration, another of the grantees mortgaged seven acres of the land to *A*, who did not become a party to the arbitration. *A* subsequently obtained a decree on his mortgage and proceeded to execute it by attachment. The plaintiff intervened in execution, but, on the 1st March, 1884, the Court passed an order stating that the plaintiff's land was not attached, and in fact his possession then remained undisturbed. *A* subsequently executed his decree, and purchased the land brought to sale by the Court. The plaintiff's possession was disturbed under colour of this purchase, and he now sued in 1889 to recover the land sold to him:—*Held*, that the order of the 1st of March, 1884, was not an order within the meaning of the Civil Procedure Code, s. 283, and accordingly that the suit was not barred by the one year's rule of limitation. PULLAMMA *v.* PRADOSHAM.

[18 Mad. 316

4.—Art. 11.—*Suit by reversioner for possession—Accrual of right to sue—Unsuccessful application in execution proceedings against widow—Civil Procedure Code* (1882), *s.* 283.] Under Art. 141, Sch. II of the Limitation Act (XV of 1877) a reversioner's right to sue accrues on the death of the widow. The fact that the reversioner has made an unsuccessful application for possession in execution-proceedings against the widow, and has not sued under s. 283 of the Civil Procedure Code (Act XIV of 1882) does not debar him under Art. 11 of the Limitation Act from filing a regular suit. TAI *v.* LADU.

[20 Bom. 801

LIMITATION ACT (XV OF 1877)— *continued.*

5.—Art. 11.—*Civil Procedure Code* (1882), *s.* 280—*Claim by a mokuraridar*—Upon attachment of immoveable property in execution of decree, a claim was made on the ground that the judgment-debtor had granted a *mokurari* in respect of the property in favour of the claimant. The claim was allowed, and the property was ordered to be sold with a declaration of the *mokurari*. More than a year after this order, the decree-holder who purchased at an execution sale brought a suit for a declaration that the *mokurari* was fraudulent and *benami* and for possession and mesne profits:—*Held*, that the order was a judicial determination under s. 280 of the Civil Procedure Code (1882), and that therefore the suit was barred under Art. 11 of the second schedule of the Limitation Act (XV of 1877). RAJARAM PANDEY *v.* RAGHUBANSMAN TEWARY.

[24 Calc. 563

——, Art 12.

See s. 7.

[17 Mad. 316

1.—Art. 12.—*Suit to set aside sale in execution of decree—Suit for land sold in execution as property of third parties.*] The plaintiffs sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share:—*Held*, that the decree was right: *Quære:* Whether the suit would have been barred under the one year's rule of limitation if the sale had been confirmed. *Suryanna* v. *Durgi*, I. L. R. 7 Mad. 258, doubted; *Parekh Ranchor* v. *Bai Vakhat*, I. L. R. 11 Bom. 119, referred to. NARASIMHA NAIDU *v.* RAMASAMI.

[18 Mad. 478

2.—Art. 12.—*Sale under Public Demands Recovery Act (Bengal Act VII of* 1880*) for arrears of cesses—Confirmation of sale.*] Where the Board of Revenue discharged an order of the Commissioner, dated the 25th January, 1884, which had confirmed a sale by the Collector in 1882, but afterwards on the 21st August, 1886, discharged its own order and revived that of the Commissioner:—*Held*, that the confirmation of sale dated only from the 21st August, 1886, and that a suit brought in July, 1887, to set aside the sale was not barred by Act XV of 1877, Art. 12. BAIJNATH SAHAI *v.* RAMGUT SINGH.

[23 Calc. 775
[L. R. 23 I. A. 45

3.—Art. 12.—*Madras Rent Recovery Act (Madras Act VIII of* 1865*), ss. 7, 38, 39 and 40—Suit to recover land sold, without setting aside sale.*] Where a plaintiff sued to recover land alleged to have been sold under the provisions of the Rent Recovery Act, alleging that the provisions of s. 7 of that Act had not been complied with, and that therefore the sale was illegal:—*Held*, that the suit could not proceed without setting aside the sale, and that the sale having taken place more than a year before the institution of the suit, the suit was barred. RAGAVENDRA AYYAR *v.* KARUPPA GOUNDAN.

[20 Mad. 33

4.—Art. 12.—*Dispossession—Suit to recover land, sold by mistake in execution of decree.*] Limitation Act, Sch. II, Art. 12 (*a*), is not applicable to a case in which dispossession is the cause of action, and in which the plaintiff was not a party to, or bound by, the sale:—*Held*, accordingly, that a suit brought in 1892 to recover possession of the plaintiff's share of land sold by mistake in execution of a decree against his uncle in 1881 was not barred by limitation. KADAR HUSSAIN *v.* HUSSAIN SAHEB.

[20 Mad. 118

5.—Art. 12.—*Suit to recover property sold in execution of a decree in excess of what was saleable under the decree.*] Article 12, cl. (*b*) of the second schedule to the Limitation Act, 1877, does not apply to a suit to recover property sold ostensibly in execution of a decree, but the sale of which was in fact not authorized by the decree under which the said property purported to have been sold. *Ram Lall Moitra* v. *Bama Sundari Debia*, I. L. R. 12 Calc. 307; *Balwant Rao* v. *Muhammad Husain*, I. L. R. 15 All. 324; *Lala Mobaruk Lal* v. *The Secretary of State for India in Council*, I. L. R. 11 Calc. 200; *Dakhina Churn Chattopadhya* v. *Bilash Chundar Roy*, I. L. R. 18 Calc. 526; *Mahomed Hossein* v. *Purundur Mahto*, I. L. R. 11 Calc. 287; and *Sadagopa* v. *Jamuna Bhai Ammal*, I. L. R. 5 Mad. 51, referred to; *Suryanna* v. *Durgi*, I. L. R. 7 Mad. 258, dissented from. NAZAR ALI *v.* KEDAR NATH.

[19 All. 308

1.—Art. 14.—*Suit to set aside order of Government officer—Order null and void.*] Article 14 of Sch. II of the Limitation Act with reference to suits to set aside orders of officers of Government does not apply to a case where the order is an absolute nullity. BEJOY CHAND MAHATAB BAHADUR *v.* KRISTO MOHINI DASI.

[21 Calc. 626

2.—Art. 14.—*Khoti Settlement Act (Bombay Act I of* 1880*), ss.* 20, 21 *and* 22*—Act or order of Settlement Officer—Dhara lands—Suit for a declaration that lands were khoti lands—Jurisdiction of Civil Court—Collector, Power of—Adverse possession—Cause of action.*] A Survey Settlement Officer decided in the year 1882 that certain lands situate at the *khoti* village of Tadil, in the Ratnagiri District, were *dhara* lands of *S* and another, but the entry in the survey register that they were

LIMITATION ACT (XV OF 1877)— *continued.*

dhara lands was not made till 1889. In the meanwhile, *F* and others, who were the *khots* of the village, made an application to the special Survey Officer to revise the decision of the Settlement Officer of the year 1882, and the special Settlement Officer having rejected this application in 1885, they brought the present suit in 1887 against *S* and others for a declaration that the lands were their *khoti* lands. The Judge dismissed the suit on the ground that the Settlement Officer's decision being final under ss. 20 and 21 of the Khoti Settlement Act (Bombay Act I of 1880), and it having not been set aside within one year from its date, the suit was time-barred under Art. 14, Sch. II of the Limitation Act (XV of 1877): — *Held*, reversing the decree, that the claim was not time-barred. Under ss. 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which as provided by s. 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court:—*Held*, further, that s. 21 does not contemplate any "order" being made by the Survey Officer between the parties; and even if framing the register be regarded as an "act" of the Survey Officer, s. 22 provides for its being amended by the Collector himself, in accordance with the decision of the Civil Court: —*Held*, further, that although the defendants might have paid only the assessment before 1878-79, their adverse possession of the lands as *dhara* did not begin to run against the plaintiffs until 1878-79, when such a claim was actively advanced by the defendants. The plaintiffs' cause of action arose in 1882, when the Survey Officer determined that the lands were *dhara*, and the present suit, which was brought within six years to reverse that decision, was therefore in time. FAKI GULAM MOHIDIN *v.* SAJNAK.

[18 Bom. 244

3.—Art. 14.—*Estates Partition Act (Bengal Act VIII of* 1876), *ss.* 116 *and* 150—*Right of suit—Suit for possession.*] A suit for possession of land of which the owners have been dispossessed in pursuance of an order of the Collector under s. 116 of the Estates Partition Act (Bengal Act VIII of 1876), will lie, even though no suit is brought to set aside the Collector's order under s. 150. Article 14 of Sch. II of the Limitation Act (XV of 1877) does not bar such a suit. LALOO SINGH *v.* PURNA CHANDER BANERJEE.

[24 Calc. 149

——, Art. 30.—*Railways Act (IV of* 1879), *s.* 11—*Claim for compensation for loss of goods.*] In January, 1890, a box containing rupees was delivered by the plaintiffs to the defendant company in Bombay to be carried to Saugor. From the evidence it appeared that the plaintiffs did not intend to insure the box. The box was taken to the booking office at the station, and the parcel clerk asked what it contained, and was told that it contained coin, and he learned casually that the amount was Rs. 6,000. The clerk charged Rs. 18-1-0 for the box, which was the "treasure rate" for carriage. This sum was paid, and the box was duly despatched, but was lost or stolen in the course of transit. The plaintiffs sued to recover the Rs. 6,000. The defendants contended that, having regard to the provisions of s. 41 of Act IV of 1879, they were not liable, inasmuch as (1) the contents of the box had not been duly disclosed, nor (2) had an increased charge been paid. The plaintiffs obtained a decree in the lower Court. On appeal, *held* (reversing the decree) that the defendant company was not liable. *Per* BAYLEY, J.—That the claim of the plaintiffs was one against the defendants for compensation for losing goods, and fell within Art. 30, Sch. II of the Limitation Act (XV of 1877), and that as this suit was not brought until after the expiration of two years from the date of the loss it was barred by limitation. GREAT INDIAN PENINSULAR RAILWAY CO. *v.* RAISETT CHANDMULL.

[19 Bom. 165

——, Art. 32.—*Bengal Tenancy Act (VIII of* 1885), *s* 25, *cl.* (*a*), *and s.* 155—*Suit for ejectment and removal of trees—Limitation Act (XV of* 1877), *Sch. II, Art.* 120.] Article 32 of Sch. II of the Limitation Act (XV of 1877) applies to a suit brought under cl. (*a*) of s. 25 and s. 155 of the Bengal Tenancy Act (VIII of 1885) for the ejectment of a tenant and removal of trees planted by him on land leased out for agricultural purposes. Article 120 does not apply to such a case. *Kedarnath Nag* v. *Khettur Paul Sritiyutno*, I. L. R. 6 Calc. 34; and *Gunesh Dass* v. *Gondour Koormi*, I. L. R. 9 Calc. 147, distinguished. SOMAN GOPE *v.* RAGHUBIR OJHA.

[24 Calc. 160

——, Art. 36.

See ART. 49.

[19 Mad. 80

1.—Art. 36.—*Suit for damages for misappropriation of crops—Limitation Act (XV of* 1877), *Sch. II, Arts.* 39, 48, 49 *and* 109.] In a suit for damages for misappropriation of paddy grown on plaintiffs' land, on the allegation that the defendant had wrongfully and forcibly reaped and misappropriated the crops, defendants pleaded limitation of two years under Art. 36 of Sch. II of the Limitation Act (XV of 1877):— *Held* by NORRIS and GHOSE, JJ. (RAMPINI, J., dissenting), that the suit was not barred by limitation under Art. 36:—*Held* by NORRIS, J. (without expressing any opinion on the applicability or otherwise of Arts. 39, 49 and 109) that all the conditions existed in this case to bring it within Art. 48 of Sch. II of the Limitation Act. *Essoo Bhayaji* v. *Steamship "Savitri,"*

LIMITATION ACT (XV OF 1877)— *continued.*

I. L. R. 11 Bom. 133, referred to:—*Held* by GHOSE, J.—Regarding the suit as one for compensation for the wrongful act on the part of the defendants in cutting the crops on the plaintiffs' ground, Art. 39 would save a portion of the plaintiffs' claim from being barred by limitation. If, however, it is regarded simply as a suit for damages for carrying away and misappropriating the crops, the case would fall under Art. 49. *Pandah Gazi* v. *Jennuddi* I. L. R. 4 Calc. 665, dissented from; *Puddolochan Pardan* v. *Baidyanath Maity*, Rule 381 of 1894 decided 22nd August, 1894, followed:—*Held* by RAMPINI, J.—None of the Arts. 39, 49 and 109 applied to this case, and the suit was barred by the provision of Art. 36. SURAT LALL MONDAL v. UMAR HAJI.

[22 Calc. 877

2.—Art. 36. — *Proceeding under Companies Act (VI of 1882), s. 214—Compensation against directors.*] The special proceeding provided for by s. 214 of Act VI of 1882 is not subject to the limitation prescribed by Art. 36 of Sch. II of the Limitation Act. CONNELL *v.* HIMALAYA BANK.

[18 All. 12

3.—Art. 36.—*Application by liquidator for money improperly distributed to shareholders.*] An application was made in 1894 under the Companies Act of 1882, s. 214, by an official liquidator appointed in 1891, paying that the directors of the company in liquidation be ordered to pay over to him a sum of money which had been improperly distributed among the shareholders:—*Held*, that Art. 36 of the Limitation Act was not applicable, and that the application was not barred by limitation. RAMASAMI *v.* STREERAMULU CHETTI.

[19 Mad. 149

——, Art. 39.

See ART. 36.

[22 Calc. 877

——, Art. 47.

See RES JUDICATA — JUDGMENTS ON PRELIMINARY POINTS.

[21 Bom. 91

1.—Art. 47.—*Order of Criminal Court as to possession — Parties bound by order—Criminal Procedure Code* (1882), *s.* 145.] The limitation of three years prescribed by Art. 47, Sch. II of the Limitation Act (1877) applies to all persons bound by, or parties to, an order under s. 145 of the Criminal Procedure Code, and to any other persons who may claim the property through any such persons under a title derived subsequent to the order. *Aukhil Chunder Chowdhry* v. *Mirza Delawar Chowdhry*, 6 C. L. R. 93, distinguished. JOGENDRA KISHORE ROY CHOWDHRY *v.* BROJENDRA KISHORE ROY CHOWDHRY.

[23 Calc. 731

LIMITATION ACT (XV OF 1877)— *continued.*

2.—Art. 47.—*Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Purchase of the equity of redemption by the assignee—Merger—Suit brought by the assignee to recover possession—Assignee bound by Mamlatdar's order against mortgagor—Mamlatdars Act (Bombay Act V of 1864), s. 15—Mamlatdars Act (Bombay Act III of 1876), s. 18—Limitation Act IX of 1871, Sch. II, Art. 46.*] One *R*, who was the owner of the land in dispute, mortgaged it to *P* in July, 1870. In October, 1876, *B*, a tenant of the land, obtained an injunction against *R* restraining him from interfering with his (*B's*) possession, in a possessory suit which was filed in the Mamlatdar's Court in May, 1876. In July, 1877, *P* obtained a decree on his mortgage, and in execution he got possession of the property from *R* (the mortgagor) in June, 1879. The plaintiff, who was the assignee of both *P* and *R* (mortgagee and mortgagor), sued *B* in ejectment in September, 1888. Both the lower Courts allowed the claim. On second appeal by *B*, the plaintiff (*inter alia*) contended that having taken an assignment of the mortgage from the mortgagee, he was not bound by the proceedings in the Mamlatdar's Court in 1876 against the mortgagor. But, *held*, that when the plaintiff, having previously taken an assignment of *P's* mortgage, purchased the equity of redemption from *R*, the mortgage was extinguished, there being no circumstance from which an intention could be presumed to keep it alive. The plaintiff could not stand in a better position than *R*, and was bound by the proceedings in the Mamlatdar's Court, notwithstanding that he had taken an assignment of *P's* mortgage. In those proceedings the defendant had claimed a right of permanent possession as against *R*, and the effect of the Mamlatdar's order was to continue him in possession until ejected by the decree of a Civil Court. It was therefore incumbent upon *R* to bring a suit within three years from the Mamlatdar's order, as provided by Art. 46, Sch. II of the Limitation Act (IX of 1871), and that not having been done, the plaintiff, who derived his title from *R*, could not recover possession from the defendant. BAPU BIN MAHADAJI *v.* MAHADAJI VASUDEO.

[18 Bom. 348

3.—Art. 47.—*Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Effect of Mamlatdar's order—Limitation Act, s. 28—Suit by party against whom Mamlatdar's order was made.*] The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew, and of which after his death in 1878 she had assumed the management. In 1881, she brought a possessory suit against the first defendant in the Mamlatdar's

LIMITATION ACT (XV OF 1877)—*continued.*

Court, which suit was dismissed in January, 1885, the Mamlatdar holding that she had not been in possession. In a civil suit, however, which (pending the proceedings in the Mamlatdar's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him. In 1887, the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mamlatdar's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December, 1887. In 1890, the plaintiff filed this suit to recover possession and for mesne profits since 1887. The defendant pleaded that the plaintiff had no title to the land, and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mamlatdar's order in 1885 dismissing her possessory suit:—*Held*, that the Mamlatdar's order of January, 1885, had no conclusive effect, and was rendered ineffectual by the subsequent decree of the Civil Court; and as the plaintiff continued in possession notwithstanding that order, down to 1887, the present suit was not barred by limitation, and neither her remedy nor her right to the land was extinguished. KRISHNACHARYA *v.* LINGAWA.

[20 Bom. 270

——, Art. 48.

See ART. 36.

[22 Calc. 877

——, Art. 49.

See ART. 36.

[22 Calc. 877

See ART. 120.

[21 Calc. 157

——, Art. 49.—*Suit for compensation for attachment before judgment—Limitation Act. Sch. II, Art. 36—Suit for damages.*] In a suit by *A* against *B* the property of *B* was attached before judgment in November, 1888. The suit was dismissed in October, 1889, and an appeal by the plaintiff was dismissed in July, 1890. *B* now sued *A* in September, 1892, for damages occasioned by the attachment before judgment:—*Held*, that Art. 49 was applicable, and the cause of action having arisen in 1888, the suit was barred. If the two years' limitation provided by Art. 36 was applicable, as for a tort, the suit was still barred by limitation. MANAVIKRAMAN *v.* AVISILAN KOYA.

[19 Mad. 80

1.—Art. 57 and Art. 120.—*Suit on pledge of moveable property—Prayers in plaint both for personal decree and for right to enforce charge against property pledged.*] A suit on a pledge of certain moveable property, made in respect of a loan of money on the 10th February, 1887, was instituted on the 14th December, 1891. The plaint prayed for a decree for the money lent against the defendant personally, and also that the charge might be enforced against the article pledged:—*Held* that, so far as the prayer for a personal decree was concerned, the suit was governed by Art. 57 of Sch. II of the Limitation Act, and was barred; but so far as the plaintiff sought to enforce his charge against the property pledged, the suit fell, not within that article, but within Art. 120 of the same schedule and was therefore not barred. NIM CHAND BABOO *v.* JAGABUNDHU GHOSE.

[22 Calc. 21

2.—Art. 57 and Art. 120.—*Loan on security of moveable property—Suit to recover money by sale of property pledged and also from the defendant personally.*] Where a plaintiff who had lent money on the security of moveable property sued to recover the money both by sale of the property pledged, and also asked for a decree personally against the defendant, should the amount realised by the sale prove insufficient, it was *held* that, so far as the plaint prayed for a decree against the defendant personally, Art. 57 of the second schedule of Act XV of 1877 was applicable; but, so far as the plaintiff sought to enforce his charge against the property pledged, the suit fell within Art. 120. *Nim Chand Baboo v. Jagabundhu Ghose*, I. L. R. 22 Calc. 21, followed. MADAN MOHAN LAL *v.* KANHAI LAL.

[17 All. 284

——, Art. 59.

See ART. 60.

[18 Mad. 390

1.—Art. 60.—*Deposit—Loan—Demand.*] The plaintiff claimed to recover from the defendant, who was his grandfather, the sum of Rs 4,917, which was the amount standing to his credit in an account in the defendant's books. In November, 1869, the plaintiff being then one year old, his mother (the defendant's daughter) paid over to the defendant the sum of Rs. 650, and at her request the money was credited in the books of the defendant's firm in the name of her son the plaintiff. A further sum was similarly paid over by her in December, 1871, and at her request was credited to the same account. The plaintiff alleged, and the Court found, that these sums were presents which had been made to him on his birthday and other auspicious occasions. The said sums had been carried over from year to year in the firm's books, the interest being added each year, but no payment had ever been made to the plaintiff, or on his behalf, out of the sum so standing to his credit. Compound interest had been allowed in the account, and, on the 9th November,

LIMITATION ACT (XV OF 1877)—*continued.*

1893, the amount standing to the credit of the plaintiff was Rs. 4,917. The plaintiff contended that the money had been paid to, and accepted by, the defendant as a deposit to be held in trust for him. The defendant alleged that the money in question had been lent to him by the plaintiff's mother, and contended that the plaintiff's claim was barred by limitation :—*Held*, that the plaintiff's claim was not barred. The defendant stood in a fiduciary position to the plaintiff, and therefore there was a deposit within the meaning of Art. 60 of the Limitation Act (XV of 1877), and limitation did not commence to run until demand. DORABJI JEHANGIR RANDIVA *v.* MUNCHERJI BOMANJI PANTHAKI.

[19 Bom. 352

—*Held*, in the same case, on appeal, affirming the decision of the Court below, that the defendant had held the money not as a loan but as a deposit ; that Art. 60 of the Sch. II of the Limitation Act (XV of 1877) applied ; and that the plaintiff's claim was not barred. MUNCHERJI BOMANJI PANTHAKI *v.* DORABJI JEHANGIR RANDIVA.

[19 Bom. 775

2.—**Art. 60 and Art. 59.**—*Money deposited—Banker and customer—Money lent—Deposit—Cause of action—Demand.*] A, at the suggestion of *B*, a shopkeeper, deposited with him certain sums of money on the terms that the money should be repaid with interest on demand. It appeared that *B* was in the habit of receiving deposits from his customers on such terms. *A* having died, his widow and administratrix sued more than three years after the date of the deposit to recover the amount deposited, the money having been demanded within three years of the date of the suit :—*Held*, that the suit was governed by the Limitation Act, Sch. II, Art. 60, and not by Art. 59, and accordingly was not barred by limitation. PERUNDEVITAYAR AMMAL *v.* NAMMALVAR CHETTI.

[18 Mad. 390

——, **Art. 61.**

See ART. 120.

[20 Mad. 23

——, **Art. 61.**—*Suit for money payable to the plaintiff for money paid for the defendant—Suit for account—Limitation Act, Sch. II, Art.* 120.] Under an award two persons were made liable each for the payment of a moiety of the expenses of certain temples which were held jointly. One of the persons so made liable, alleging that he had paid more than his share of the expenses, sued the other for the balance in excess of the moiety which he was bound to pay under the award :—*Held*, that the suit was governed by Art. 61 of the second schedule to the Indian Limitation Act, 1877, and that, although the taking of accounts might be necessary, the suit was not

LIMITATION ACT (XV OF 1877)—*continued.*

a suit for an account to which Art. 120 of the same schedule might apply. *Rohan* v. *Jwala Prasad*, I. L. R. 16 All. 333, referred to. RAMAN LALJI MAHARAJ *v.* GOPAL LALJI MAHARAJ.

[19 All. 244

——, **Art. 62.**

See ART. 97.

[18 Mad. 173

See ART. 120.

[18 All. 430

——, **Art. 62.**—*Separation in Joint Hindu family—Suit for share in joint property—Limitation Act, Sch. II, Art.* 127.] At the separation of members of a joint family governed by the Benares School of Hindu law, in 1885, the unrealized debts of the family were left undivided. The debts were subsequently realized by some of the members of the separated family. In a suit brought by the other members in 1893 (*inter alia*) to recover their shares in the debts so realized :—*Held*,—that the claim of the plaintiffs could only be treated as coming under Art. 62, Sch. II of the Indian Limitation Act (XV of 1877), and the claim in respect of such of the debts as were realized more than three years before the institution of the suit was barred by limitation. Article 127 of the same schedule would not apply to such a case. *Thakur Prasad* v. *Partab*, I. L. R. 6 All. 442, referred to. BANOO TEWARY *v.* DOONA TEWARY.

[24 Calc. 309

——, **Art. 65.**

See ART. 116.

[18 All. 160

——, **Art. 75.**—*Payment of bond debt by instalments—Right to sue for whole debt on default of payment of any instalment—Waiver of right to sue, Nature of proof of.*] On the 15th August, 1891, the defendant executed a document admitting that he was indebted to the plaintiffs in the sum of Rs. 2,125, and agreeing to pay the amount in seven instalments, the first (Rs. 401) to be paid in August, 1891, the second on the 28th April, 1892, and the remainder at intervals of six months. The document contained the following clause :—" If any of the instalments is not duly paid, I am to pay the whole amount with interest at eight annas per cent. per annum." The defendant failed to pay the first instalment, which the plaintiffs admitted was now barred, but, on the 10th June, 1895, the plaintiffs filed this suit to recover the remainder of the debt and interest. The defendant pleaded that under the above clause the whole sum became due on the failure to pay the first instalment ; that the right to sue which then accrued was never waived, and that the suit was now barred by limitation :—*Held*, that the plaintiffs having failed to prove a waiver of the right of suit which accrued to them in August, 1891, the suit was barred by limitation.

LIMITATION ACT (XV OF 1877)—*continued.*

The waiver contemplated by Art. 75 of Sch. II of the Limitation Act (XV of 1877) must be either an agreement between the parties, or such conduct as will itself afford clear evidence of a legal waiver. KANKUCHAND SHIVCHAND *v.* RUSTOMJI HORMUSJI.

[20 Bom. 109

——, **Art. 84.**—*Taxed costs of an attorney, Suit for—Suit or particular business, Meaning of—Attorney and client.*] Subsequent proceedings taken in connection with the taxation of an opponent's costs are not part of the suit or application itself. Where a firm of attorneys brought a suit against their clients to recover the costs of an application to the High Court:—*Held*, that limitation began to run from the date of the judgment in the application. *Balkrishna Pandurang* v. *Govind Shivaji*, I. L. R. 7 Bom. 578; and *Rothery* v. *Munnings*, 1 B. & Ad. 5, approved. Items of an attorney's bill for work done, subsequently to the judgment, in opposing the taxation of the opponent's costs, although done on his client's instructions, will not take the matter out of the Limitation Act. Such items do not form part of the costs of the original application. WATKINS *v.* FOX.

[22 Calc. 943

ADMINISTRATOR-GENERAL OF BENGAL *v.* CHUNDER CANT MOOKERJEE.

[22 Calc. 952 note

——, **Art. 85.**—*Mutual accounts.*] To constitute a mutual account there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. Thus an account consisting of entries of payments made by one party in reduction of his debt to the other, and of payments made by the latter on behalf of the former party for the same purpose is not a mutual account within the meaning of Art. 85 of Sch. II of the Limitation Act. *Hirada Basappa* v. *Gadigi Muddappa*, 6 Mad. 142, cited and followed. A shifting balance is a test of mutuality, but its absence is not conclusive proof against mutuality. VELU PILLAI *v.* GHOSE MAHOMED.

[17 Mad. 293

——, **Art. 91.**

See ART. 120.

[16 All. 73

1.—Art. 91.—*Will—Suit to contest validity of will.*] Article 91 of Sch. II of the Limitation Act of 1877 is not applicable to wills. SAJID ALI *v.* IBAD ALI.

[23 Calc. 1
[L. R. 22 I. A. 171

LIMITATION ACT (XV OF 1877)—*continued.*

2.—Art. 91.—*Application of Art.* 91.] Article 91, Sch. II of the Limitation Act (XV of 1877) only applies to suits in which the documents sought to be set aside were intended to be operative against the plaintiff or his predecessor in title and would remain operative if not set aside. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri*, I. L. R. 13 Calc. 308; L. R. 13 I. A. 84. *Janki Kunwar* v. *Ajit Singh*, I. L. R. 15 Calc. 58; L. R. 14 I. A. 148. *Raghubar Dyal Sahu* v. *Bhikya Lal Misser*, I. L. R. 12 Calc. 69; and *Mahabir Pershad Singh* v. *Hurihur Pershad Narain Singh*, I. L. R. 19 Calc. 629, distinguished. SHAM LALL MITRA *v.* AMARENDRO NATH BOSE.

[23 Calc. 460

3.—Art. 91.—*Suit to set aside alienation by de facto manager of Hindu endowment.*] The possession of the manager of a Hindu endowment cannot be treated as adverse to the endowment. *Semble:* Article 91 of Sch. II of the Limitation Act (XV of 1877) has no application to a suit to set aside an alienation of property by the *de facto* manager of a Hindu endowment. *Unni* v. *Kunchi Ammal*, I. L. R. 14 Mad. 26; and *Sikher Chund* v. *Dulputty Singh*, I. L. R. 5 Calc. 363, cited. SHEO SHANKAR GIR *v.* RAM SHEWAK CHOWDHRI.

[24 Calc. 77

4.—Art. 91 and Art. 95.—*Suit to set aside deed of partition on ground of fraud—Suit by minor on attaining majority—Limitation Act (XV of 1877), s. 7.*] A suit to set aside a deed of partition on the ground of fraud is governed by Art. 91 or Art. 95, Sch. II of the Limitation Act (XV of 1887), and must be brought within three years after the minor plaintiff has attained majority according to s. 7 of the Act. CHANVIRAPA *v.* DANAVA.

[19 Bom. 593

——, **Art. 92, and Arts. 93 and 118.**—*Suit to set aside adoption—Deed of permission to adopt.*] The merits of a claim depended upon the authenticity of an *anumati patro* (deed of permission to adopt) alleged to have been given to a widow by her husband, who died in 1832. She first adopted in 1884 a boy who soon after died. She then, in 1887, adopted the defendant, whose adoption the reversionary heirs of her husband brought this suit, in 1888, to have set aside:—*Held*, that neither Art. 92, nor Art. 93, of Sch. II of the Limitation Act (XV of 1877), was applicable to bar the suit. There had been no "issue" of the instrument, the *anumati patro*, within the meaning of the former article, the term "issue" having no application to such a document. There had not, within the meaning of Art. 93, before this suit, been any attempt to enforce the instrument against the plaintiffs. Article 118, as the suit had been brought within due time after

LIMITATION ACT (XV OF 1877)—*continued.*

the adoption, did not bar it. HURRI BHUSAN MUKERJI *v.* UPENDRA LAL MUKERJI.

[24 Calc. 1

[L. R. 23 I. A. 97

——, Art. 95.

See ART. 91.

[19 Bom. 593

——, Art. 97 and Art. 62.—*Suit to recover purchase-money paid on a void sale—Failure of consideration—Money had and received.*] In 1885 the plaintiff obtained from the defendant a sale deed of certain land and paid part of the purchase-money. Subsequently a judgment-creditor of the defendant's husband sought to execute his decree against the land in question, and eventually, in October, 1889, obtained a decree in the High Court under which the plaintiff was ejected. The plaintiff now sued in 1892, less than three years from the date of the last-mentioned decree, to recover the sum paid by him to the defendant as abovementioned:—*Held*, that the suit was not barred by limitation. VENKATANARASIMHULU *v* PERAMMA.

[18 Mad. 173

——, Art. 99.

See S. 4.

[18 All. 206

See ART. 120.

[20 Mad. 23

——, Art. 109.

See ART. 36.

[22 Calc. 877

——, Art. 109.—*Mesne profits—Wrong-doers independent of the defendant—Civil Procedure Code* (1882), *s.* 211.] In a suit brought on the 26th September, 1893, for mesne profits of land, for the possession of which a decree had been previously obtained against the defendant, the plaintiff claimed damages in respect of the Fusli years 1297—1300, the year 1297 F. ending on the 28th September, 1890. The defendant objected (*inter alia*) that the claim in respect of the period beyond three years before the date of suit was barred by limitation, and that she was not liable for profits of the lands from which she had been dispossessed by others:—*Held* (1) under Art. 109, Sch. II of the Limitation Act, the defendant was liable for the mesne profits received by her or which she might have with due diligence received *during* the three years before the date of suit, and not *before*. The period of three years fixed has no reference to the time when rents fall due. *Byjnath Persad* v. *Badhoo Singh*, 10 W. R. 486; *Thakoor Dass Acharjee Chuckerbutty* v. *Shoshee Bhoosun Chatterjee*, 17 W. R. 208; and *Thakoor Dass Roy Chowdhry* v. *Nobin Kristo Ghose*, 22 W. R. 126, distinguished. (2) In the case of every wrong the liability of the defendant is limited to damages for the wrong which he has himself done. With reference to the definition of mesne profits in s. 211 of the Civil Procedure Code, if the defendant was excluded from possession, she could not be said to have actually or even impliedly received the profits, nor could she with ordinary or extraordinary diligence have received them; the case was remanded to determine what mesne profits were payable between the 26th September, 1890, and the date, if any, when dispossession was proved. ABBAS *v.* FASSIHUDDIN.

[24 Calc. 413

1.—Art. 110.—*Madras Rent Recovery Act* (*Madras Act VIII of* 1865), *s.* 10—*Suit for arrears of rent—Date from which limitation runs.*] In a suit for arrears of rent due under a decree given under s. 10 of the Rent Recovery Act (Madras Act VIII of 1865) the period of limitation in Art. 110, Sch. II of the Limitation Act, commences from the date when the plaintiff was in a position to sue for rent, *i.e.*, the date of the decree. SOBHANADRI APPA RAU *v.* CHALAMANNA.

[17 Mad. 225

2.—Art. 110.—*Madras Rent Recovery Act* (*Madras Act VIII of* 1865), *s.* 10—*Suit to recover arrears of rent—Proceedings in Revenue Court to enforce acceptance of pottah tendered—Time from which period of limitation is computed.*] In a suit for rent for a period which had expired more than three years before the date of the plaint, it appeared that proceedings had taken place in a Revenue Court under the Rent Recovery Act (Madras), 1865, to enforce acceptance by the defendant of the *pottah* tendered by the landlord. These proceedings had terminated on appeal in favour of the landlord less than three years before the institution of his suit:—*Held*, that the period of limitation applicable to the suit was not computable from the date of the termination of the proceedings under the Rent Recovery Act, and that the suit was barred by limitation. *Sobhanadri Appa Rau* v. *Chalamanna*, I. L. R. 17 Mad. 225, overruled. SRIRAMULU *v.* SOBHANADRI APPA RAU.

[19 Mad. 21

——, Art. 113.—*Specific Relief Act* (*I of* 1877), *s.* 30—*Suit for balance due under an award.*] A suit for the recovery of a balance of money due under the terms of an award, being virtually a suit for the specific enforcement of the award, is, by reason of s. 30 of the Specific Relief Act, 1877, subject to the limitation prescribed by Art. 113 of Sch. II of the Limitation Act, 1877, *Sukho Bibi* v. *Ram Sukh Das*, I. L. R. 5 All. 263, followed. RAGHUBAR DIAL *v.* MADAN MOHAN LAL.

[16 All. 3

LIMITATION ACT (XV OF 1877)— *continued.*

1.—Art. 115.—*Suit on contract unregistered—Money due under unregistered contract payable on demand—Money to be paid for particular purpose—Construction of agreement.*] The plaintiffs were husband and wife, and they were married on the 14th March, 1888. On the day of their marriage the defendant, who was the father of the first plaintiff, gave him a note addressed to his (the defendant's) firm as follows:—"Do you be pleased to pay Rs. 7,000, namely, seven thousand, for ornaments in respect thereof, together with interest thereon at the rate of Rs. 4, namely four, per one centum per one annum, within a period of 3, namely three, years from this day." The first plaintiff took this note to the defendant's firm, and in return received the following document addressed to himself:—"You sent one *chithi* (note) for Rs. 7,000, namely, seven thousand, on me. The sum which your father caused to be paid to you in respect of the ornaments appertaining to your marriage has been credited to your account, bearing interest at 4, namely four, per cent. For the same this 'receipt' has been given in writing." No money was actually paid by the defendant to the plaintiffs, and none was lodged with the defendant's firm by the plaintiffs, but subsequently to the above transaction an account was kept in the defendant's books, in which the first plaintiff was duly credited with interest every year. In March, 1894, the first plaintiff demanded from the defendant the amount standing to his credit out of his account. The defendant pleaded limitation:—*Held*, that the purpose for which the money was to be paid, *viz.*, the purchase of ornaments for the wife, indicated that it was the intention of the parties that payment should not be made until the plaintiffs were prepared to purchase ornaments, and that until then the money should remain with the defendant's firm. The intention was that the money should not be paid until the plaintiffs required it for the purpose for which it was destined, and demanded it. The contract was not broken until the plaintiffs demanded the money, which they did in March, 1894. Article 115 of Sch. II of the Limitation Act (XV of 1877) applied to the case, and the suit was not barred. MANCHERJI BOMANJI *v.* NUSSERWANJI MANCHERJI.

[20 Bom. 8

2.—Art. 115.—*Breach of contract—Refusal to perform contract of sale—Cause of action—Suit for refund of money—Continuing breach.*]—*T*, who was the uncle of the first defendant and the father of the second defendant, agreed with *C* to sell certain land to him for consideration received, and to cause the land, then standing in the name of a third party, to be registered in *C's* name. It was further agreed that if *T* failed to convey and cause the change of the revenue registry, *T* should return the purchase-money. *C* was put in possession, but in 1890 the second defendant conveyed the land to one *M* who ejected *C*:—*Held*, that the breach did not occur prior to November, 1890, and that the suit was not barred. CHINNATAMBI GOUNDEN *v.* CHINNANA GOUNDEN.

[19 Mad. 391

LIMITATION ACT (XV OF 1877)— *continued.*

1.—Art. 116.—*Registered bond executed by minor.*] A sum of money was advanced by the plaintiff to a minor who gave a bond for the amount and duly registered the same. In a suit on the bond it was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable under the bond, and that the fact of its being registered could not help the plaintiff, and consequently the suit was barred by limitation, being brought more than three years after the advance was made:—*Held*, that in such a case the bond could not be ignored and treated as non-existent, being the basis of the suit, and that on its being proved to have been executed by the minor in respect of money advanced for necessaries, effect must be given to the fact of registration, and the suit having been brought within six years from the date of the bond was not barred by limitation, and the plaintiff was entitled to a decree. SHAM CHARAN MAL *v.* CHOWDHRY DEBYA SINGH PAHRAJ.

[21 Calc. 872

2.—Art. 116.—*Suit on mortgage—Claim for interest post diem in absence of covenant—Claim in nature of damages.*] The defendants hypothecated to the plaintiff to secure repayment of a debt, their interest in certain lands. The hypothecation deed was executed in 1875 and registered, and it contained the following terms with regard to interest and the repayment of the debt:—"We (the obligors) shall pay interest at 7 per cent. per annum before the 30th October of each year; we shall pay in full the principal amount on the 30th October, 1878, after clearing off the interest, and redeem this deed: should we fail to pay the interest regularly according to the instalments, we shall at once pay the principal together with the amount of interest." Default was made in the payment of interest in 1876. The plaintiff, in 1888, sued the executants of the above instrument and their heirs and representatives to recover the principal together with interest up to date. The Court of first instance held that the claim for a personal decree was barred by limitation, but passed a decree directing the sale of the hypothecated land in default of payment of the principal together with interest up to date. On appeal:—*Held*, that since the instrument did not provide for interest *post diem*, any claim in the nature of a claim for such interest could be allowed by way of damages only, and was not a charge on the land; and treating the claim as one for damages for failure to pay the principal on the 30th October, 1878, such claim was barred by limitation under Art. 116, Sch. II of the Limitation Act. BADI BIBI SAHIBAL *v.* SAMI PILLAI.

[18 Mad. 257

LIMITATION ACT (XV OF 1877)—*continued.*

But *see* RAMA REDDI *v.* APPAJI REDDI

[18 Mad. 248

where interest *post diem* was allowed, though barred.

3.—Art. 116.—*Suit for interest post diem in absence of covenant—Suit on mortgage.*] The plaintiff sued in 1893 to recover principal together with interest due up to date on a mortgage which provided for the repayment of principal and interest in December, 1882, but contained no covenant for the payment of interest *post diem* :—*Held*, that the claim for interest *post diem* was barred by limitation. THAYAR AMMAL *v.* LAKSHMI AMMAL.

[18 Mad. 331

4.—Art. 116.—*Claim for interest on money due under registered mortgage-deed—Interest Act (XXXII of* 1839).] Article 116 of Sch. II of Act XV of 1877, applies to a claim to have interest allowed under Act XXXII of 1839, in respect of the non-payment on the due date of the money due under a registered mortgage-deed, if the suit is not brought within six years of the breach of contract. NARINDRA BAHADUR PAL *v.* KHADIM HUSAIN.

[17 All. 581

But *see* MATHURA DAS *v.* NARINDAR BAHADUR

[19 All. 39

[L. R. 23 I. A. 138

in which this decision was not approved of by the Privy Council.

5.—Art. 116.—*Mortgage by conditional sale—Interest after due date—Interest Act (XXXII of* 1839)—*Limitation Act, Art.* 132 — *Transfer of Property Act, s.* 86.] *Held* by a majority of the Full Bench (MACLEAN, C.J., O'KINEALY, J., and MACPHERSON, J.) that when a mortgage bond contains no stipulation for the payment of interest after the due date, interest is payable by virtue of the Interest Act (XXXII of 1839). Article 116 of Sch. II to the Limitation Act prescribes the period of limitation in such a case; and therefore only six years' interest after the due date at 6 per cent. per annum is recoverable. The mortgagor cannot redeem until he has repaid the principal sum with such interest and costs. *Gudri Koer* v. *Bhubaneswari Coomar Singh*, I. L. R. 19 Calc. 19, approved; *Mathura Das* v. *Narindar Bahadur Pal*, I. L. R. 19 All. 39; L. R. 23 I. A. 138; *Cook* v. *Fowler*, L. R. 7 H. L 27; and *Bikramjit Tewari* v. *Durga Dyal Tewari*, I. L. R. 21 Calc. 274, referred to:—*Held* (by TREVELYAN and BANERJEE, JJ.) that the interest after due date should be regarded as interest due on the mortgage within the meaning of s. 86 of the Transfer of Property Act (IV of 1882); and that being so, that it becomes a charge on the mortgaged property, and the period of limitation applicable to the claim for such interest is twelve years, under Art. 132 of Sch. II to the Limitation Act (XV of 1877). MOTI SINGH *v.* RAMOHARI SINGH.

[24 Calc. 699

6.—Art. 116.—*Suit for arrears of maintenance—Suit on ekrar executed by priest of Hindu idol creating charge on offerings to idol—Right of priest to charao (offerings to idol).*] In a suit upon an *ekrar* executed by the priest of an idol for recovery of arrears of maintenance, and for a declaration that the money due was realizable from the surplus of the *charao* (offerings to the idol), and recoverable from the defendant's successors in office:—*Held*, that the limitation applicable to the case was that prescribed by Art. 116, Sch. II of the Limitation Act (XV of 1877). Articles 128 and 129 do not govern the case, as they relate to cases in which the right of maintenance is based on the Hindu law. *Nobocoomar Mookhopadhya* v. *Siru Mullick*, I. L. R. 6 Calc. 94, referred to. GIRIJANUND DATTA JHA *v.* SAILAJANAND DATTA JHA.

[23 Calc. 645

7.—Art. 116.—*Suit for rent—Registered contract signed by lessee only.*] In a suit for rent accrued due more than three years before the date of the plaint, it appeared that the contract between the landlord and tenant was comprised in a registered document which was signed only by the latter:—*Held*, that the suit was not barred by limitation. AMBALAVANA PANDARAM *v.* VAGURAN.

[19 Mad. 52

8.—Art. 116.—*Suit for breach of contract in writing registered—Stipulation as to amount of profits of property sold.*] The plaintiffs purchased certain immoveable property from the defendants by a registered sale deed on the 20th of June, 1888. It was stipulated in the sale deed that if the profits of the property should be below Rs. 300, the vendors would make good the deficiency. The vendees sued upon this contract on the 19th of September, 1892, alleging that the profits amounted to only Rs. 177-1-0:—*Held*, that the suit as regards limitation was governed by Art. 116 of the second schedule of Act XV of 1877, and not by Art. 65. *Kishen Lal* v. *Kinlock*, I. L. R. 3 All. 112, referred to. AMANAT BIBI *v.* AJUDHIA.

[18 All. 160

——, Art. 118.

See ART. 92.

[24 Calc. 1

[L. R. 23 I. A. 97

LIMITATION ACT (XV OF 1877)—*continued.*

See ART. 140.

[21 Bom. 159

See ART. 141.

[21 Bom. 376

1.—Art. 118.—*Suit for possession where adoption is set up—Hindu law, Adoption.*] Against a claim for the proprietary right by inheritance brought by the nearest *bandhu*, or cognate heir, of the deceased, the defendant, in possession, set up his adoption by the widow under her husband's authority. The Courts below had found that no such authority had been given, and that the widow, not adopting to her husband, had adopted the defendant as her son:—*Held*, that on the facts found, this was not a suit to which limitation under Art. 118, Sch. II, Act XV of 1877, was applicable. LACHMAN LAL CHOWDHRI *v.* KANHAYA LAL MOWAR.

[22 Calc. 609
[L. R. 22 I. A. 51

2.—Art. 118.—*Suit for possession of property incidentally necessitating the setting aside of, or declaration of invalidity of, an adoption.*] Article 118 of Sch. II of the Indian Limitation Act applies only to suits for a declaration that an adoption is invalid or in fact never took place; it does not apply to a suit for possession of property merely because it may be necessary in order to give effect to the relief claimed in such suit to find that a given adoption is invalid. *Basdeo* v. *Gopal*, I. L. R. 8 All. 644; *Ghandharap Singh* v. *Lachman Singh*, I. L. R. 10 All. 485; *Padajirav* v. *Ramrav*, I. L. R. 13 Bom. 160; and *Lala Parbhu Lal* v. *Mylne*, I. L. R. 14 Calc. 401, referred to. NATTHU SINGH *v.* GULAB SINGH.

[17 All. 167

3.—Art. 118.—*Suit for possession by Hindu widow as heiress—Defendant in possession under an alleged adoption.*] A Hindu died in 1884, leaving the plaintiff, his widow, and certain landed and other properties. The defendant claimed, to the knowledge of the plaintiff in 1885, to have been adopted by the deceased, and from that date he had claimed as an adopted son to be entitled to the estate of which the plaintiff never enjoyed possession. She now sued in 1893 for possession with mesne profits alleging in the plaint that the adoption had been falsely set up, but seeking no declaration with regard to it:—*Held*, that the suit was barred by limitation. PARVATHI AMMAL *v.* SAMINATHA GURUKAL.

[20 Mad. 40

——, **Art. 120.**

See ART. 32.

[24 Calc. 160

See ART. 57.

[22 Calc. 21
17 All. 284

LIMITATION ACT (XV OF 1877)—*continued.*

See ART. 61.

[19 All. 244

See ART. 144—IMMOVEABLE PROPERTY.

[19 Bom. 43

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

See TRUST.

[18 Bom. 551

1.—Art. 120, and Arts. 49 and 123.—*Suit by Mahomedan widow to have declared her right by local custom to life interest in estate of her husband—Suit for distributive share of property—Suit for moveable property wrongly taken.*] To a suit by a Mahomedan widow against the brother of her deceased husband to have declared her right to possess for life the estate of the latter in accordance with a proved local custom, Art. 120, Sch. II, Limitation Act (XV of 1877), was held applicable, it not being a suit for a distributive share of property within the meaning of Art. 123 of the same; nor a suit for specific moveables wrongly taken within the meaning of Art. 49, and no other article of Sch. II being applicable. MAHOMED RIASAT ALI *v.* HASIN BANU.

[21 Calc. 157
[L. R. 20 I. A. 155

2.—Art. 120.—*Liability of son for father's debts—Suit for money against sons of a deceased judgment-debtor—Decree for money against father to be discharged by instalments—Previous execution proceedings—Form of decree.*] A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October, 1877. The decree provided for payment of the secured debt in various instalments by May, 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons. The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891 for the payment out of the family property of all the unpaid instalments:—*Held*, that the period of limitation applicable to the suit was six years, and that time began to run for the purposes of limitation from the date when each instalment would have become due from the deceased judgment-debtor; and that the plaintiff was entitled to a decree for payment out of the family property of all such instalments as would have so become due at the date of the

LIMITATION ACT (XV OF 1877)—*continued.*

suit, and for a declaration only as to the subsequent instalments. RAMAYYA *v.* VENKATARATNAM.

[17 Mad. 122

3.—Art. 120.—*Suit to set aside an instrument—Suit for maintenance of possession in joint family property—Limitation Act, 1877, Sch. II, Art. 91.*] The plaintiff sued for maintenance of possession in certain joint family property by cancelment so far as his interest was concerned, of a certain deed of sale by which another coparcener in the same property had purported to convey the whole to a stranger:—*Held*, that the limitation applicable to such a suit was that prescribed by s. 120 of Sch. II of the Limitation Act, 1877, and not that prescribed by Art. 91. *Sobha Pandey* v. *Sahodra Bibi*, I. L. R. 5 All. 322, referred to; *Janki Kunwar* v. *Ajit Singh*, I. L. R. 15 Calc. 58, distinguished. DIN DIAL *v.* HAR NARAIN.

[16 All. 73

4.—Art. 120.—*Suit to set aside invalid trust—Conveyance to trustees.*] Under Art. 120, Sch. II of the Limitation Act (XV of 1877), the right to recover property settled on invalid trusts accrues directly the property is conveyed to the trustees. COWASJI NOWROJI POCHKHANAWALLA *v.* RUSTOMJI DOSSABHOY SETNA.

[20 Bom. 511

5.—Art. 120.—*Exclusive occupation of joint lands by some of the co-owners—Suit by the other joint tenants for compensation.*] Some of the joint tenants of certain lands took the use and occupation of part of the joint lands, to the exclusion of the other joint tenants, who afterwards brought a suit for compensation for such use and occupation:—*Held*, that the period of limitation for such a suit was governed by Art. 120 of the Limitation Act; and that therefore the plaintiffs were entitled to recover compensation for six years. WATSON & CO., *v.* RAM CHAND DUTT.

[23 Calc. 799

6.—Art. 120.—*Suit to recover haq-i-chaharum—Suit for money had and received—Limitation Act, Art. 62.*] *Held*, that the limitation applicable to a suit by a zemindar to recover *haq-i-chaharum*, alleged to be payable to him by custom on the sale of a house, was that prescribed by Art. 120 of the second schedule of the Indian Limitation Act, 1877, and not that prescribed by Art. 62. *Kirath Chand* v. *Ganesh Prasad*, I. L. R. 2 All. 358, approved; *Nanku* v. *The Board of Revenue for the N.-W. P* I. L. R. 1 All. 444, referred to; *Raghu Nath Prasad* v. *Girdhari Das*, Weekly Notes All. (1893) 65, dissented from. SHAM CHAND *v.* BAHADUR UPADHIA.

[18 All. 430

7.—Art. 120.—*Decree for rent against tenants jointly—Execution against one defendant—Suit by him for contribution—Limitation Act, Arts*

LIMITATION ACT (XV OF 1877)—*continued.*

61 and 99.] The holder of a zemindari village obtained a decree jointly against sixty-eight persons, including the present plaintiff and defendants, for Rs. 4,100, being rent accrued due on lands in the village, and in execution he brought to sale property of the plaintiff, and on the 28th October, 1889, he received, out of the sale proceeds, Rs. 2,650. The share payable by the plaintiff was Rs. 183-10-10 only, and he instituted the present suit against the defendants on the 28th October, 1892, to recover the amounts which they were liable to contribute:—*Held*, that Limitation Act, Sch. II, Art. 99, did not govern the case, and that, whether Art. 61 or Art. 120 was applicable, the suit was not barred by limitation. PATTABHIRAMAYYA NAIDU *v.* RAMAYYA NAIDU.

[20 Mad. 23

8.—Art. 120.—*Suit to recover from the widow of a deceased Mahomedan money realised by her on account of a debt due to the deceased.*] *Held*, that a suit brought by the other heirs to recover from the widow of a deceased Mahomedan a sum of money said to have been realised by her on account of a mortgage debt due to her deceased husband, was a suit to which the limitation applicable was that prescribed by Art. 120 of the second schedule to the Indian Limitation Act, 1877. *Mahomed Riasat Ali* v. *Hasin Banu*, I. L. R. 21 Calc. 157; *Sithamma* v. *Narayana*, I. L. R. 12 Mad. 487; and *Kundun Lal* v. *Bansidhar*, I. L. R. 3 All. 170, referred to. UMARDARAZ ALI KHAN *v.* WILAYAT ALI KHAN.

[19 All. 169

——, Art. 122.—*Suit on barred judgment debt—Suit for administration—Mortgage decree—Transfer to High Court for execution—Application for execution by sale—Civil Procedure Code (1882), ss. 227, 230 and 244—Transfer of Property Act (IV of 1882), ss. 67, 89 and 99—Limitation Act (XV of 1877), Sch. II, Arts. 179 and 180.*] On the 29th September, 1882, a decree was obtained against the defendant's husband in a suit on a mortgage by the latter dated the 6th April, 1880. On the 27th July, 1883, an order was made for transfer of the decree to the High Court for execution. On the 8th April, 1886, the mortgagee applied to the High Court for execution by attachment of the mortgaged properties, and, in the same year an order for attachment was made. The mortgagee died in April, 1892; and on the 20th August, 1894, the plaintiff (his widow and administratrix) applied to the High Court for an order absolute for sale of the mortgaged properties under s. 89 of the Transfer of Property Act. On the 5th January, 1895, the application was refused, on the ground that the mortgaged properties were outside the territorial jurisdiction of the High Court. The plaintiff then instituted the present suit, in which she sought (*inter alia*) administration of the estate of the mortgagor (who had died before the mortgage suit was filed), and asked for the sale of such properties as might

LIMITATION ACT (XV OF 1877)— *continued.*

be found subject to such mortgage:—*Held* (affirming the decision of SALE, J.), that whether the plaintiff sued on the original debt or on the decree of the 29th September, 1882, the suit was barred by limitation:—*Held*, also, that, even apart from any question of limitation, the suit was not maintainable by reason of the provisions of ss. 230 and 244 of the Civil Procedure Code, the questions arising in the suit being such as should have been determined in execution of the decree, and not by a separate suit. JOGEMAYA DASSI *v.* THACKOMONI DASSI.

[24 Calc. 473

——, Art. 123.

See ART. 120.

[21 Calc. 157
[L. R. 20 I. A. 155

——, Art. 123.—*Suit for legacy under a will—Cause of action—Amendment of plaint.*] A suit was brought in May, 1894, by a legatee claiming under the will of a testator, who died on the 8th December, 1881, against the executors of the will. The plaint did not specifically ask for payment of the legacy or for ascertainment of the share in the residue due to the plaintiff, but set forth certain alleged acts of misconduct on the part of the defendants with respect to their dealings with the property, and prayed the Court to call for an account, to set aside certain sales of the property made by the defendants, and for damages. The Court of first instance, without going into the merits, held that the suit was really for an account, and dismissed it as being barred. On appeal to the High Court:—*Held*, that the plaint should have been amended in order to show clearly that the plaintiff really was trying to recover his legacy from the defendants personally, and that therefore the suit fell within Art. 123, Sch. II of the Limitation Act, which gives a period of twelve years from the date the legacy became due, and, that being one year after the testator's death, (or the 8th December, 1882), the suit was in time. CURSETJEE PESTONJEE BOTTLIWALLA *v.* DADABHAI EDULJEE.

[19 Mad. 425

1.—Art. 124.—*Suit to have the appointment of a karnam declared void—Suit for hereditary office.*] A suit by existing *karnams*, to have the appointment of another person as a *karnam* jointly with themselves declared void, does not fall within the provision of Art. 124 of the Limitation Act. LAKSHMINARAYANAPPA *v.* VENKATARATNAM.

[17 Mad. 395

2.—Art. 124.—*Suit for declaration of right as khadims of temple and for turn of worship—Suit for hereditary office.*] The plaintiffs sued for a declaration that they were *khadims* of a certain Mahomedan *durga* and as such entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by the worshippers at the *durga*:—*Held*, that the suit, being a claim to an hereditary office, fell under Art. 124 of the Limitation Act, and was not barred by limitation. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH.

[24 Calc. 83

——, Art. 125. — *Alienation — Decree in a collusive suit against a Hindu widow.*] *Held*, that the action of a Hindu widow, in causing a collusive suit to be brought against her and confessing judgment therein, whereby the plaintiff in that suit got a decree for possession of property of which the widow was in possession holding a Hindu widow's estate, amounted to an "alienation" of such property within the meaning of Art. 125 of the second schedule of Act XV of 1877. SHEO SINGH *v.* JEONI.

[19 All. 524

——, Art. 127.

See ART. 62.

[24 Calc. 309

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[18 Bom. 513

1.—Art. 127.—*Joint family property—Suit by Mahomedan for possession of share by inheritance.*] Article 127 of Sch. II of the Limitation Act (XV of 1877) does not apply to a suit by Mahomedans for possession by right of inheritance of shares in the property of their deceased ancestor. MAHOMED AKRAM SHAHA *v.* ANARBI CHOWDHRANI.

[22 Calc. 954

2.—Art. 127.—*Hindu law—Partition—Property excluded from partition.*] The members of a joint Hindu family made a partition of family property in 1877, reserving undivided, however, certain land and the capital and assets of their family business which remained under the control and in the possession of one of them, *viz.*, the present first defendant. The plaintiff, who was a member of the family, demanded his share in the undivided property on the 4th of March, 1882, and the defendants refused to give effect to his claim. The plaintiff in 1892 sued for his share in the property:—*Held*, that the property in question was co-parcenary property notwithstanding the transaction of 1877, and that the plaintiff's suit was not barred by limitation. MUTHUSAMI MUDALIAR *v.* NALLAKULANTHA MUDALIAR.

[18 Mad. 418

3.—Art. 127.—*Exclusion from share in a portion of joint property.*] The fact that the plaintiffs were not excluded from their share in part of the joint property does not prevent Art. 127, Sch. II of the Limitation Act (XV of

LIMITATION ACT (XV OF 1877)— *continued.*

1877) from operating in respect of another part from which they had been excluded to their knowledge. VISHNU RAMCHANDRA *v.* GANESH APPAJI CHAUDHARI.

[21 Bom. 325

4.—Art. 127 and Art. 144.—*Partition effected without taking into account a minor co-parcener—Invalid partition—Adverse possession—Exclusion from joint property.*] Three brothers, *S*, *L* and *K*, were members of a joint Hindu family. In 1862, *S* and *L* divided the whole of the family property between them without reserving any share for their brother *K*, who was then a minor. *K* lived with *L* as a member of his family. *L* died in 1867, leaving a childless widow, with whom *K* continued to live till his death in 1876. *K* left an infant son (the plaintiff), only a year old. Subsequently *S* died in 1887, leaving two widows without issue. In 1889, the plaintiff, being still a minor, sued by his next friend to recover the family property in the possession of the widows of *L* and *S*:—*Held*, that the suit was not barred by limitation, either under Act IX of 1871 or Act XV of 1877, in the absence of any evidence showing that *K* ever demanded partition and was refused, or that he was excluded to his knowledge from all participation in the family property. KRISHNABAI *v.* KHANGOWDA.

[18 Bom. 197

——, Arts. 128 and 129.

See ART. 116.

[23 Calc. 645

——, Art. 132.

See ART. 116.

[24 Calc. 699

See ART. 147.

[20 Bom. 408

1.—Art. 132.—*Purchase-money, Suit by vendor to recover.*] The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered, and were therefore not admissible in evidence:—*Held*, that the plaintiff, as vendor, was under no necessity to rely on the bonds in order to establish a charge in the property sold in respect of the unpaid purchase-money. Unpaid purchase-money is a charge on the property in the hands of the vendee, and the claim to enforce it falls under Art. 132, Sch. II of the Limitation Act. VIRCHAND LALCHAND *v.* KUMAJI.

[18 Bom. 48

2.—Art. 132.—*Suit for payment of annuity.*] A plaintiff whose right to receive a yearly payment out of the income of certain immoveable property had been settled by arbitration in the course of a suit in 1864, sued in 1890 to recover from the then holder of the property arrears of such

LIMITATION ACT (XV OF 1877)— *continued.*

allowance for two years preceding the suit. The plaintiff alleged, but failed to prove, that he and his predecessor in title had received payment of the allowance for the intervening years or any of them:—*Held* that the suit was not barred by limitation. *Chugan Lal* v. *Bapubhai*, I. L. R. 5 Bom. 68, followed. GAJPAT RAI *v.* CHIMMAN RAI.

[16 All. 189

3.—Art. 132.—*Suit for kattubadi—Whether kattubadi is rent merely or constitutes a charge.*] The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants, on the ground that the villages had been granted on service tenure, and that he was entitled to resume them. He prayed in the alternative for a decree for six years' arrears of *kattubadi*:—*Held*, that the plaintiff was entitled to a decree for only three years' arrears of *kattubadi*. VIZIANAGARAM MAHARAJAH *v.* SITARAMARAZU.

[19 Mad. 100

Contra VENKATARAMA DOSS *v.* MAHARAJAH OF VIZIANAGRAM.

[19 Mad. 103 note

4.—Art. 132.—*Suit for money due on mortgage bond—Money payable by instalments—Default in payment of instalment—Right to sue for entire amount due on default of payment of any instalment.*] Where, by a mortgage bond (hypothecating immoveable property) executed by the defendants, a sum of money was made payable by four instalments, the plaintiff to be at liberty in case of any default to sue either for the amount of that instalment or for the whole amount due on the bond:—*Held*, that limitation ran from the date of the first default. SITAB CHAND NAHAR *v.* HYDER MALLA.

[24 Calc. 281

5.—Art. 132.—*Suit for money lent on mortgage—Cause of action—Bond, Construction of.*] In a mortgage bond, dated the 14th June, 1876, it was stipulated that the money advanced should be repaid "in the month of Jeyth, 1289, Fusli, being a period of six years." The last day of Jeyth, 1289, answered to the 1st June, 1882, and the period of six years from the date of the bond ended on the 14th June, 1882. In a suit brought upon the bond on the 12th June 1894:—*Held* (AMEER ALI, J., *dubitante*), that the money sued for became due on the 14th June, 1882, and the suit was in time. *Rungo Bujaji* v. *Babaji*, I. L. R. 6 Bom. 83; *Almas Banee* v. *Mahomed Ruja*, I. L. R. 6 Calc. 239; and *Gnanasammanda Pandaram* v. *Palaniyandi Pillai*, I. L. R. 17 Mad. 61, referred to by BEVERLEY, J. LATIFUNNESSA *v.* DHAN KUNWAR.

[24 Calc. 382

6.—Art. 132.—*Hypothecation bond for payment on certain date—On default in payment of interest whole amount payable on demand—Mean-*

LIMITATION ACT (XV OF 1877)— *continued.*

ing of "payable on demand."] Where a hypothecation bond provided for the repayment of the principal sum on a certain date with interest in the meantime payable monthly, and further provided that, on default in payment of interest, the principal and interest should become payable on demand:—*Held*, that the period of limitation prescribed by Art. 132 of the Limitation Act was applicable, and that period began to run from the date of the default. *Hanmantram Sadhuram Pity* v. *Bowles*, I. L. R. 8 Bom. 561: and *Hall* v. *Stowell*, I. L. R. 2 All. 322, distinguished. PERUMAL AYYAN v. ALAGIRISAMI BHAGAVATHAR.

[20 Mad. 245

——, Art. 134.

See ART. 144—ADVERSE POSSESSION.

[23 Calc. 536

1.—Art. 134.—*Suit to remove trustee and recover possession of trust property from third party — Civil Procedure Code* (1882), *s.* 539.] Article 134 of the second schedule of the Indian Limitation Act (XV of 1877) applies to a suit for the dismissal of a trustee and for the recovery of trust property from the hands of a third party to whom the same has been improperly alienated. Such a suit is within the scope of s. 539 of the Civil Procedure Code. *Subbayya* v. *Krishna*, I. L. R. 14 Mad. 186, followed; *Lakshmandas Parashram* v. *Ganpatrav Krishna*, I. L. R. 8 Bom. 365, distinguished. SAJEDUR RAJA CHOWDHURI *v.* GOUR MOHUN DAS BAISHNAV.

[24 Calc. 418

2.—Art. 134.—*Mortgage—Sub-mortgage—Suit for redemption.*] In 1864 *A* mortgaged the property in dispute with possession to *B*. *B* and his widow after his death sub-mortgaged various portions of it to *S* (defendant No. 3) in 1864, 1866 and 1870. After the death of the mortgagor, *A*, his grandsons (plaintiffs Nos. 1, 2 and 3) sold their equity of redemption to plaintiffs Nos. 4 and 5, and in 1891 the five plaintiffs sued defendants Nos. 1 and 2, the heirs of *B* (original mortgagee), and the sub-mortgagee (defendant No. 3), for redemption and possession. The defendants contended that the suit was barred by the Limitation Act (XV of 1877), Sch. II, Art. 134:—*Held*, that Art. 134 did not apply, as the language of the sub-mortgage-deed showed that the transaction was merely a mortgage of the mortgage interest of *B*, and not of the entire property in the land. *Baivakhan Daudkhan* v. *Bhiku Sazba*, I. L. R. 9 Bom. Art. 475; and *Yesu Ramji* v. *Balkrishna* I. L. R. R. 15 Bom. 585, referred to. SAVALARAM *v.* GENU.

[18 Bom. 387

3.—Art. 134.—*Mortgage—Decree obtained by mortgagee for possession until payment of mortgagee debt—Possession taken by mortgagee under decree —Continuance after decree of relation of mortgagor and mortgagee—Sale by mortgagee—Vendor and purchaser—Subsequent suit for redemption by mortgagor against mortgagee and his vendee—Purchaser, bonâ fide.*] A decree on a mortgage having directed the mortgagor to give possession to the mortgagee until the payment of the mortgage debt and costs found due, the mortgagee entered into possession, and subsequently sold the property to a third party. More than twelve years after the sale, the mortgagor brought a redemption suit both as against the mortgagee and the purchaser:—*Held*, that the suit (as against the purchaser) was barred under Art. 134, Sch. II of the Limitation Act (XV of 1877), and that, notwithstanding the decree for possession, the relationship of mortgagor and mortgagee continued, whether under the original mortgage or the decree. Absence of *bona fides*, as distinguished from actual knowledge of the vendor's title, does not prevent the purchaser from claiming the benefit of Art. 134. In order to give the purchaser the benefit of Art. 134, the purchase need not be *bonâ fide* in the sense of being without "constructive notice" of the restricted nature of the vendor's title, but by the term "purchaser" in that article is meant a person who purchases that which is *de facto* a mortgage upon the representation made to him and in the belief that it is an absolute title. PANDU *v.* VITHU.

[19 Bom. 140

——, Art. 136.—*Suit for possession of a tenure by a purchaser from the purchaser from a third person who bought at an auction, but never obtained possession—Civil Procedure Code* (1882), *s.* 316—*Confirmation of sale—Limitation Act, Art.* 138.] In a suit for possession of a tenure by a purchaser, whose vendor purchased it at a private sale from a third person who bought at an auction, but never had obtained possession, the defendants objected that the suit was barred by limitation:—*Held*, that Art. 136, Sch. II of the Limitation Act (XV of 1877) applied to the case, and the period of limitation would run from the date when the vendor of the plaintiffs first became entitled to possession, *i.e.*, when the sale was confirmed, and consequently the suit was not barred. MOHIMA CHUNDER BHUTTACHARJEE *v.* NOBIN CHUNDER ROY.

[23 Calc. 49

——, Art. 137.—*Mortgage of joint property—Share of co-owner sold in execution of decree—Subsequent sale of the mortgaged property by all co-owners - Redemption of mortgage—Suit for partition and redemption by purchaser at Court-sale—Adverse possession*] Three undivided brothers (*B*, *R* and *A*) mortgaged part of their joint property (plot 1) in 1870, and the rest (plot 2) in 1874. In 1875 *B's* share in both plots was sold in execution of a decree against him and was purchased by the plaintiff. In 1877 *B* and his two brothers sold plot 1 to defendants, Nos 3—6, who at once paid off the mortgage of 1870 and took possession. On

LIMITATION ACT (XV OF 1877)—*continued.*

the 11th February. 1877. the three brothers paid off the mortgage of 1874 of plot 2, and in the same month mortgaged that plot to the defendants with possession. On the 26th August, 1890, the plaintiff sued for possession of *B's* share by partition and redemption if necessary:—*Held*, that the suit was barred by Art. 137 of the Limitation Act (XV of 1877). *B* became entitled to possesion of his share of plot 1 in 1877, when the mortgage of 1850 was paid off by the defendants, and their possession had been since then adverse to the plaintiff. As to plot 2, *B* had become entitled to possession of his share therein on the 11th February, 1877, when the mortgage of 1874 was redeemed. *Ramchandra* v. *Sadashiv*, I. L. R. 11 Bom. 422; *Bhaudin* v. *Shaik Ismail*, I. L. R. 11 Bom. 425; *Faki Abas* v. *Faki Nurudin*, I. L. R. 16 Bom. 191; and *Naro* v. *Rugho* (P. J. 1892, p. 412), referred to. GANESH MAHADEO BHANDARKAR *v.* RAMCHANDRA SAMBHAJI MHASKAR.

[20 Bom. 557

——, **Art. 138.**

See ART. 136.

[23 Calc. 49

See ART. 144—ADVERSE POSSESSION.

[18 Bom. 37

[24 Calc. 715

1.—Art. 138.—*Purchase at Court auction and sale in execution of decree—Suit for possession of land—Cause of action.*] In a suit for possession of land instituted on the 1st April, 1891, it appeared that the land in question had been purchased by the plaintiff in a Court auction held in execution of a decree on the 20th June, 1878, and that the sale to the plaintiff was confirmed on the 31st March, 1879, which was the date upon which the certificate issued. The plaintiff failed to prove that the judgment-debtor was out of possession at or subsequently to the date of the sale:—*Held*, that the suit was governed by the Limitation Act, Sch. II, Art. 138; that "the date of the sale" in that article means the date of the actual sale, not the date of the confirmation of the sale, and that, accordingly, the suit was barred by limitation. *Kishori Mohun Roy Chowdhry* v. *Chunder Nath Pal*, I. L. R. 14 Calc. 644; and *Bhyrub Chunder Bundopadhya* v. *Soudamini Dabee*, I. L. R. 2 Calc. 145, followed. VENKATALINGAM *v.* VEERASAMI.

[17 Mad. 89

2.—Art. 138.—*Suit for possession by assignee of purchaser at sale in execution of decree—Civil Procedure Code* (1882), *ss.* 316 *and* 318.] *A*, the purchaser at an execution-sale of a house, of which the judgment-debtor was in possession, sold it, agreeing at the same time to obtain the sale certificate and to deliver possession of the house. After more than three years had expired, he applied for the certificate, which, however, was refused on the ground that his application

LIMITATION ACT (XV OF 1877)—*continued.*

was time-barred. On *A's* death, his widow made a second application, which was granted. In a suit by the assignee of *A* to recover possession, the widow set up a title thereto under a sale by the original owner (the judgment-debtor) to herself and others executed more than three years after the Court-sale:—*Held*, that, since *A*, the execution-purchaser, would be barred, the plaintiff was equally barred. *Arumuga* v. *Chokalingam*, I. L. R. 15 Mad. 331, followed; *Kishori Mohon Roy Chowdhry* v. *Chunder Nath Pal*, I. L. R. 14 Calc. 644, distinguished. PULLAYYA *v.* RAMAYYA.

[18 Mad. 144

——, **Art. 140.**

See ART. 144—ADVERSE POSSESSION.

[19 Bom. 809

——, **Art. 140.**—*Limitation Acts* (*XV of* 1877), *Sch. II, Art.* 118, *and* (*IX of* 1871), *Sch. II, Art.* 129—*Suit by devisees to recover possession of property devised by will—Prayer to declare alleged adoption invalid.*] A suit by a devisee to recover possession of immoveable property and to have an alleged adoption (on the strength of which the defendant is in possession) set aside, not being one merely to obtain a declaration, is governed by Art. 140 of the Limitation Act (XV of 1877) To such a suit Art. 118 does not apply, as the prayer for declaration is subservient or auxiliary only to granting of the substantial relief. FANNYAMMA *v.* MANJAYA HEBBAR.

[21 Bom. 159

——, **Art. 141.**

See ART. 144—ADVERSE POSSESSION.

[19 Bom. 809

1.—Art. 141.—*Limitation Act* (*IX of* 1871), *Art.* 142—*Dismissal of Hindu daughter's claim as heiress of a share, as barred by time, Effect of, in regard to right of reversioner after her—Res judicata—Adverse possession.*] In a suit in which the parties were descendants of a common ancestor, who had daughters only, one of the latter having been the mother of the first defendant, who was in possession of the ancestral estate, the plaintiff, son of the last surviving daughter, claimed, on her death, possession of his share by inheritance, and also of a share acquired by him by gift from another of the defendants, a son of another daughter of the common ancestor. The defence was that a suit, brought by the plaintiff's mother, in her lifetime, against the same defendant, for her share, had been dismissed by a final judgment on the ground of her claim having been barred by limitation:—*Held*, that the estate, which would have devolved on the plaintiff's mother as survivor of her sisters, was similar to the inheritance of a widow, the same result following the dismissal of the daughter's suit that ensued in regard to the decree adverse

LIMITATION ACT (XV OF 1877)—*continued.*

to the widow in *Katama Natchiar* v. *The Raja of Shivagunga*, 9 Moo. I. A. 539, where a decree, duly obtained against the widow, bound the reversioner. The previous decree dismissing the daughter's suit as barred was binding on her son. His claim therefore failed, not only as to his share by inheritance, but, for similar reasons, as to the share acquired by him from the defendant donor. Article 141 in the schedule to Act XV of 1877, fixing the date of the female heir's decease as the starting point for limitation, did not alter the existing law as to the effect of a decree adverse to the predecessor as representing the estate, nor did it give a new starting point to the successor, nor did Art. 142 in the Schedule to Act IX of 1871. HARI NATH CHATTERJEE *v.* MOTHURMOHUN GOSWAMI.

[21 Calc. 8
[L. R. 20. I. A. 183

2.—Art. 141.—*Adverse possession—Hindu widow—Reversioner.*] *N*, a Hindu, died in 1863, leaving two widows *T* and *G*, and a daughter *M*, him surviving. In 1874, the widows divided the property left by *N* between them, and one of them *T*, in 1876, sold her share to one who again sold it to the plaintiff. *G* died in 1887, *T* having died previously. After the death of the two widows, *M*, the daughter of *N*, was heir to the property, but the plaintiff in this suit alleged a title by adverse possession:—*Held*, that the plaintiff had no title as against the defendant *M*. Under Art. 141 of the Limitation Act (XV of 1877) the possession of *T's* vendee and of the plaintiff was not adverse to the defendant *M*, who took as *N's* heir, until the death of *G*, the surviving widow of *N*, in 1887. *Srinath Kur* v. *Prosunno Kumar Ghose*, I. L. R. 9 Calc. 937; and *Cursandas Govindji* v. *Bundravanda Purshotam*, I. L. R. 14 Bom. 488, followed. MUKTA *v.* DADA.

[18 Bom. 216

3.—Art. 141.—*Partition of land between widow and mother of the last male owner—Creation of life estate—Adverse possession—Widow's right on death of mother—Hindu law.*] The widow and mother of a land-owner, who died without issue, divided his land between them in 1869. The mother sold her share of the land in 1870, and died in 1890. The widow now sued in 1893 to recover the property from the vendee:—*Held*, that the widow and mother on the partition took life estates in their respective shares; that the cause of action arose on the death of the mother when the possession of the vendee became adverse; that the suit was not barred by limitation, and the plaintiff was entitled to recover. PARVATHI AMMAL *v.* SUNDARA MUDALI.

[20 Mad. 459

4.—Art. 141.—*Suit by reversioner on the death of female heir—Adverse possession.*] A Hindu died in 1880, leaving him surviving (1) a daughter who died in 1886, who was the grandmother of one of the plaintiffs; and (2) the son of a predeceased daughter who was another plaintiff; and (3) the widow of a predeceased son who was the defendant. The plaintiffs now sued in 1893 to recover possession of his land, of which the defendant had been in possession since his death:—*Held*, that the suit was not barred by limitation, and that the plaintiffs were entitled to a decree. VENKATARAMAYYA *v* VENKATALAKSHMAMMA.

[20 Mad. 493

5.—Art. 141.—*Suit by reversioner for possession—Death of the widow—Accrual of right to sue—Unsuccessful application in execution proceedings against widow—Civil Procedure Code* (1882), *s.* 283.] Under Art. 141, Sch. II of the Limitation Act (XV of 1877) a reversioner's right to sue accrues on the death of the widow. The fact that the reversioner has made an unsuccessful application for possession in execution proceedings against the widow, and has not sued under *s.* 283 of the Civil Procedure Code (Act XIV of 1882), does not debar him from filing a regular suit. TAI *v.* LADU.

[20 Bom. 801

6.—Art. 141.—*Suit by reversioner after widow's death for share of property—Accrual of cause of action—Adoption, Effect of—Suit to set aside invalid adoption—Limitation Act, Art.* 118.] A claim by a reversioner to recover his share of the property of a Hindu who has died, leaving a widow, accrues from the death of the widow; and as to immoveable property, Art. 141 of Act XV of 1877 allows twelve years within which to bring a suit. An adoption taking place in the meanwhile does not curtail such period or impose upon the reversioner the necessity of filing a suit to have it declared invalid during the lifetime of the widow, under pain of losing the inheritance upon the widow's death. Article 118 of Act XV of 1877 does not operate to give validity by lapse of time to an invalid adoption, if no suit is brought by the reversionary heirs within six years of its taking place to obtain a declaration that it is invalid. HARILAL PRANLAL *v.* BAI REWA.

[21 Bom. 376

7.—Art. 141.—*Reversioner, Suit by—Benami deeds with intent to defraud creditor—Limitation Acts (XV of* 1877), *s.* 1, *and Sch. II, Art.* 91, *(IX of* 1871), *Sch. II, Art.* 142—*Female heirs, Successive — Adverse possession.*] *K* executed in 1850 four *benami* documents with intent to defeat the claim of his employer on account of moneys embezzled by him; two of the documents were *hebas* (deeds of gift) in favour of *P*, his elder wife, in respect of a moiety of properties 1, 2 and 3, and two were *kobalas* (conveyances) in favour of *G*, that wife's brother, in respect of the other moiety of those properties. *K* remained in possession of the properties till his death in

LIMITATION ACT (XV OF 1877)— *continued.*

1860. After his death, the elder widow *P* remained in possession of properties 1, 2 and 3, and other properties in the district of Midnapur, and the younger widow *S* remained in possession of properties in the district of Hughli. In November, 1860, *P* executed a *kobala* in respect of the 8 annas of the properties covered by the *hebas* in favour of *G's* son, then a minor. *S* died in 1868, and *P* died in 1871. A daughter of *K* by *S* succeeded them, and that daughter died in August, 1882. In a suit brought by a son of that daughter on the 4th of January, 1893, for the recovery, *inter alia*, of possession of his share of properties 1, 2 and 3 from *G's* son, with mesne profits, and for a declaration that the deeds executed by *K* were colourable transactions, and that the *kobala* executed by *P* was not valid and binding:—*Held* (1) Art. 91, Sch. II of the Limitation Act (XV of 1877) did not apply to the case; that article applying only to suits in which the documents sought to be set aside were intended to be operative against the plaintiff or his predecessor in title and would remain operative if not set aside. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri*, I. L. R. 13 Calc. 308; L. R. 13 I. A. 84; *Janki Kunwar* v. *Ajit Singh*, I. L. R. 15 Calc. 58; L. R. 14 I. A. 148. *Raghubar Dyal Sahu* v. *Bhakya Lal Misser*, I. L. R. 12 Calc. 69; and *Mahabir Pershad Singh* v. *Hurihur Pershad Narain Singh*, I. L. R. 19 Calc. 629, distinguished. (2) Art. 141, Sch. II of the Limitation Act (XV of 1877) applies to a case in which the reversion comes after several successive female heirs, and the present suit having been brought within twelve years of the death of the plaintiff's mother in August, 1882, was in time. *Kokilmoni Dassia* v. *Manik Chandra Joadar*, I. L. R. 11 Calc. 791, referred to. (3) The old law that limitation which barred the widow barred the reversioner has undergone a change under Art. 142, Sch. II of Act IX of 1871 and Art. 141, Sch. II of Act XV of 1877 [*Sreenath Kur* v. *Prosunno Kumar Ghose*, I. L. R. 9 Calc. 934, referred to]; but s. 2 of the Act of 1877 would make the old law applicable in respect of the claim to the moiety covered by the *kobala* by *K* to *G*, there being no collusion of the widow as regards that *kobala*, and more than twelve years having elapsed between the death of *K* in 1860 and the coming into operation of Act IX of 1871 in April, 1873. [*Drobomoyi Gupta* v. *Davis*, I. L. R. 14 Calc. 323, referred to.] In the present case, however, the possession held by the heir of *G* was not adverse to the widow in the sense of its being obtained against her will, and there was every reason to think that it was obtained in collusion with her; the reversioner's claim was therefore not barred by limitation. *Nobin Chunder Chuckerbutty* v. *Gurupersad Doss*, B. L. R. Sup. Vol. 1008; 9 W. R. 505, referred to. (4) As regards the moiety covered by the *hebas*, the widow when she came into possession was the heir of *K*, and she could not by any act or declaration of her own while retaining possession of her husband's estate give her possession or estate a character different from that attaching to the possession or estate of a Hindu widow; the objection that she held as donee and adversely to the reversioner therefore failed, and the claim as regards this moiety also was not barred by limitation. *Lachhan Kunwar* v. *Manorath Ram*, I. L. R. 22 Calc. 445, distinguished. SHAM LALL MITRA *v.* AMARENDRO NATH BOSE.

[23 Calc. 460

LIMITATION ACT (XV OF 1877)— *continued.*

8.—Art. 141.—*Limitation applicable to reversioner.*] One *C* *S* died without issue on the 6th January, 1869, leaving two widows, *C* and *N*, who thereupon took a widow's estate in such of his immoveable property as was not validly disposed of by him. By his will dated the 5th January, 1869, he appointed the defendant *V* and two others his executors and trustees. The two latter were dead at the date of this suit. By his will he left two immoveable properties to his wife *C* for life and two to his wife *N*, and the residue of his property he left to his trustees, directing them to apply the same in charity (*dharam*). The properties left to his widows were to revert on their death to the charity fund held by the said trustees. *C* died in 1871. *N* survived till 1888 and died in November of that year, leaving a will. The plaintiff was the nephew (brother's son) and heir of the testator, and he sued to have his rights in and to his uncle's estate ascertained. He contended that the bequests for *dharam* were void, and that the property bequeathed for that purpose was undisposed of. He claimed to be entitled to the whole of the testator's immoveable property, including that which had been devised to the widows for life. The defendant pleaded that he and his co-executors had held and dealt with the estate in accordance with the testator's will, and contended (*inter alia*) that the plaintiff's claim was barred by limitation:—*Held*, that the devise to *dharam* was too general and indefinite for the the Court to enforce, and was therefore void:—*Held*, also, that under Art. 141 of the Limitation Act (XV of 1877) the plaintiff's claim to the immoveable properties left by the testator was not barred by limitation. VUNDRAVANDAS PURSHOTAMDAS *v.* CURSONDAS GOVINDJI.

[21 Bom. 646

9.—Art. 141.—*Suit by reversioner to recover possession of immoveable property alienated by intermediate female heir—Limitation Act (XIV of 1859), s. 1—Limitation Act (IX of 1871), Art. 142.*] A female heir in possession of immoveable property for her life can, without legal necessity, make a valid alienation of her life estate, but the possession of the alienee will not, under ordinary circumstances, be adverse to the reversioner, whose cause of action for possession of the said property will not accrue until the death of the female heir, or of the last of such heirs if more than one. One *P*, a separated Hindu, died about 1822 leaving two widows, *H* and *A*, and three daughters, *R*, *J* and *D*. The widows took possession of the immoveable property of *P*, and some time before 1857 *H*, the survivor of them, sold

LIMITATION ACT (XV OF 1877)—*continued.*

a certain village to one *H P. H* died in 1857. The three daughters next succeeded to the estate of *P*, and the last of them died in 1890 without having made any attempt to interfere with the possession of the alienee. In 1894, the two sons of *R* sued for possession of the property which had been sold by *H*:—*Held*, that the suit was within time. *Per* BURKITT, J.—Decrees affecting immoveable property obtained against a female heir in respect of the subject-matter of the inheritance (if obtained without fraud or collusion or the like) are binding on the reversioner. An alienation made by a female heir in possession is good against her for her life, but is not necessarily binding on the reversioner, to whom, if it be invalid, a cause of action accrues on the death of the female heir. Where property, the estate in which has descended to a female heir, never reaches her hands, but is held adversely to her by a stranger, the cause of action for a suit for the recovery of the property accrues at the commencement of the adverse possession by the stranger, and a suit to enforce that cause of action will be barred, both against the female heir and against the reversioner, after the expiration of the statutory period of limitation counting from the commencement of the adverse possession, the stranger having after the expiration of that period acquired an absolute indefeasible title to the property. The enactment of Art. 142 in the schedule to Act IX of 1871, and of Art. 141 in the schedule to Act XV of 1877 has not made any alteration in the law as laid down in the last proceding rule. HANUMAN PRASAD SINGH *v.* BHAGAUTI PRASAD.

[19 All. 357

——, Art. 144. *Col.*

1. Immoveable Property ... 732
2. Adverse Possession ... 732

See ART. 127.

[18 Bom. 197

See ART. 149.

[19 Mad. 154

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION,

[18 Bom. 513

See POSSESSION—ADVERSE POSSESSION.

[21 Bom. 509

(1) IMMOVEABLE PROPERTY.

1.—Art. 144.—*Right of purchaser to have lands registered in his name—Nature of such right—Cause of action in respect of such right—Suit for declaration of such right—Vendor and purchaser—Limitation Act, Sch. II, Art.* 120.] Plaintiffs having purchased certain lands in 1867

LIMITATION ACT (XV OF 1877)—*continued.*

(1) IMMOVEABLE PROPERTY—*concluded.*

brought this suit in the year 1890 to obtain a declaration of their right to have the land registered in their name in the revenue records. The lower Court dismissed the suit as barred under Art. 144, Sch. II of the Limitation Act (XV of 1877):—*Held*, reversing the decree, that a right to be placed on the register was not an interest in immoveable property, and that Art. 144 of the Limitation Act did not apply. The right is one which does not give rise to a cause of action until it is asserted or denied, and a suit for a declaratory decree in respect to it must be brought within a period of six years from that date. In the present case the right had not been asserted or denied until the suit was filed, and the suit was therefore not barred. BHIKAJI BAJI *v.* PANDU.

[19 Bom. 43

2.—Art. 144.—*Growing tree—Suit for possession of tree standing on land sold to plaintiff.*] A tree standing on land is immoveable property. A suit for a tree standing on the land is governed therefore by the twelve years' limitation under Art. 144 of the Limitation Act. SAKHARAM MULSHET MHADIK *v.* VISHRAM.

[19 Bom. 207

(2) ADVERSE POSSESSION.

3.—Art. 144.—*Hindu law — Widow.*] The holder of an impartible zemindari died in 1822, leaving two widows and a daughter. The widows entered on the estate, and having successfully resisted a suit for ejectment brought by the rightful heir (the present plaintiff's great grandfather) in 1824, they and the survivor of them retained possession till 1870, when the last surviving widow died, and the daughter entered. She, or the Court of Wards on her behalf, retained possession till her death, in 1882, when the first defendant came in as the nearest then surviving *sapinda* of the last male holder. The plaintiff, who was the son of the elder undivided brother (deceased) of the first defendant, now sued in 1891 to recover the zemindari from him:—*Held*, following *Vijayasami* v. *Perasami*, I. L. R. 7 Mad. 242, that the suit was barred by limitation. KOOLAPPA NAIK *v.* KOOLAPPA NAIK.

[17 Mad. 34

4.—Art. 144.—*Symbolical possession—Judgment-debtors remaining in actual possession—Subsequent attempt by purchaser to take possession—Resistance or obstruction to execution of decree—Application to remove obstruction converted into a suit under s.* 331 *of Civil Procedure Code* (1882)—*Limitation Act (XV of* 1877), *s.* 3, *and Sch. II, Art.* 138—*Civil Procedure Code* (1882), *s.* 331.] The plaintiff purchased the property in dispute at an auction sale in execution of a decree, and, on the 14th August, 1877, he took formal possession, but the judgment-debtors remained in actual possession. On the 18th September, 1889, the plaintiff proceeded to take possession,

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

but was obstructed by the defendant, who alleged that he had purchased the property from the judgment-debtors in 1888. The plaintiff then applied for the removal of the defendant's obstruction, and his application was registered as a suit under s. 331 of the Civil Procedure Code:—*Held*, that the plaintiff's claim was barred by limitation. When his application was converted into a suit under s. 331, the rights of the parties had to be determined as if an ordinary suit for possession had been instituted against the defendant, and either Art. 138 or Art. 144 of the Limitation Act (XV of 1877) applied. In either case the defendant could avail himself of the judgment-detors' possession, which was adverse to the plaintiff. NAMDEV *v.* RAMCHANDRA GOMAJI MARWADI.

[18 Bom. 37

5.—Art. 144. — *Mortgage — Mortgagee in possession—Dispossession of mortgagee by trespasser—Adverse possession as against mortgagee when effectual also as against the mortgagor—Burden of proof.*] Land was mortgaged with possession to *A* (defendant No. 1) in 1828. In 1856, *A* was ousted from possession by *B*, a trespasser (defendant No. 2), who subsequently held the land and dealt with it as his own for forty years. The mortgagor sued both *A* and *B* for redemption. In appeal, it was contended by *B* that his possession had been adverse not merely to *A* (the mortgagee), but also to the plaintiff (the mortgagor), and that the suit was barred by limitation. The plaintiff contended that *B's* possession was not adverse to him, because he as mortgagor had no right to possession during the term of the mortgage:—*Held*, that the suit fell under Art. 144 of Sch. II of the Limitation Act (XV of 1877), and that it lay upon *B* to prove that his possession for twelve years prior to the suit was adverse to the plaintiff (the mortgagor). There may be a possession adverse to the interest of a mortgagee which nevertheless is not adverse to the interest of the mortgagor. In such a case a suit by the mortgagor, or those claiming under him, will not be barred, although one by the mortgagee may be. The case was remanded for a finding on the question of when *B's* possession became adverse to the plaintiff. CHINTO *v* JANKI.

[18 Bom. 51

6.—Art. 144.—*Alienation of an infant's property by his mother and guardian.*] Suit filed in 1891 to recover possession of certain land, the property of a Hindu, who died an infant, leaving him surviving his adoptive mother, who entered into possession and enjoyed the property till her death in 1890. It appeared that in 1861 the deceased and his adoptive mother had conveyed absolutely certain of the properties to the widow of one of his first cousins on his adoptive father's side for her maintenance and that of her daughter, and that it had been assigned by her to *A*, *B* and *C*:—*Held*, that the plaintiff's claim to

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

the lands in the possession of *A*, *B* and *C* was barred by limitation. SUNDRAMMAL *v.* RANGASAMI MUDALIAR.

[18 Mad. 193

7.—Art. 144.—*Non-payment of melvaram—Claim of kudivaram right by prescription.*] In a suit to recover land, of which neither the plaintiff nor his predecessor in title had been in possession within a period of forty years before the suit, the defendants pleaded that the plaintiff had been entitled to receive *melvaram* only, that the payment of *melvaram* had been discontinued fifteen years before the date of the suit, and that they themselves were entitled to the *kudivaram* right in the land. It was found that the non-payment of *melvaram* had not been accompanied by an assertion of adverse title, and that the defendant's *kudivaram* right had not been set up twelve years before the suit:—*Held*, that the suit was not barred by limitation. GOVINDA PILLAI *v.* RAMANUJA PILLAI.

[18 Mad. 171

8.—Art. 144.—*Mortgage by previous owner out of possession for twelve years—Alienation of endowed property.*] In a suit on a mortgage, dated the 19th June, 1888, and executed by the superintendent of a mosque, the endowments of which were comprised in the mortgage, together with defendant No. 1, therein described as his disciple, it was admitted that the first mortgagor had occupied the position of superintendent up to 1871, and that in that year he had executed an instrument authorizing defendant No. 2 to take possession of the properties on behalf of defendant No. 3 whom, as was recited, the executant had taken in adoption and appointed to be his successor. In 1874, the first mortgagor purported to cancel the instrument above referred to, but it appeared that he never actually resumed the management, and that defendant No. 2 resisted various attempts then and subsequently made to interfere with his possession, and held the properties together with defendant No. 3 up to the date of the suit:—*Held*, that defendants Nos. 2 and 3 were in adverse possession of the mortgage premises from 1871, and that the mortgage was consequently invalid whatever the purpose of the debt intended to be secured thereby. SUBBARAMAYYAR *v.* NIGAMADULLAH SAHEB.

[18 Mad. 342

9.—Art. 144.—*Symbolical possession—Effect of symbolical possession against third parties—Auction-purchaser—Right of auction-purchaser to tack on his own possession to that of judgment-debtor.*] The property in dispute belonged to *D*. He sold it to *A* on the 25th April, 1873, but did not put the vendee into possession. On the 18th April, 1883, *A* sold the property to the plaintiff. On the 4th June, 1885, in execution of a money decree against *D*, the property was put up to sale as his, and was purchased by the defendants, who were put into possession by the Court on the 26th

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

March, 1885. On the 28th March, 1885, the plaintiff sued *A* and *D's* wife (*D* being then in prison) to recover possession of the property. A decree was passed, in execution of which he obtained symbolical possession through the Court on the 8th February, 1886. When he sought to take actual possession, he was resisted by the defendants. Thereupon the plaintiff filed the present suit on the 19th December, 1889, to obtain actual possession of the property from the defendants:—*Held*, that the suit was barred under Art. 144 of the Limitation Act (XV of 1887). The defendants had a right to tack on the period of their own adverse possession as against the plaintiff to that of *D's* adverse possession as against *A*. The symbolical possession obtained by the plaintiff did not break up the continuity of the adverse possession of the defendants and the person through whom they derived their title. HARJIVAN *v.* SHIVRAM.

[19 Bom. 620

10.—Art. 144.—*Mortgage dating from before the annexation of Oude—Oude Redemption Act XIII of* 1866—*Under-proprietary rights of third parties in adverse possession, with a sub-settlement of one of the villages mortgaged.*] In 1854, before annexation (1856), the owner of a *taluka* of ten villages made a usufructuary mortgage of the entire *ilaka* to a neighbouring *talukdar*. The mortgagor died in 1857, leaving a minor son, to whom, during the events that followed, the mortgage was unknown, and whose attempts to establish an inherited right to the mortgaged *ilaka* against the *talukdar* were ineffectual whilst that ignorance lasted. The confiscation of 1858 had, at one time, swept away all rights, whether of the *talukdar*, who was mortgagee, or of the mortgagor's heir, to redeem, or of any under-proprietors on the *ilaka*. This effect was thus counteracted. In the settlement of 1859-60, adjustments were made of the ownership of property, and in this case settlement was made with the *talukdar* of his larger *talukdari* estate, in which the mortgaged *ilaka* was, at the same time, incorrectly included as part. The right of redemption was restored by Act XIII of 1866, the mortgagor's heir being, however, unaware of his title to redeem any mortgage. Under-proprietary rights were restored by order of Government in 1859. Such rights were, with a sub-settlement, decreed by a Settlement Court on the 31st July, 1866, in one of the villages of the mortgaged *ilaka*, in favour of a claimant, through whom the defendants in this suit now made title. In 1881, the mortgagor's heir, having by that time discovered the existence of the mortgage of 1854, sued the heir of the mortgagee to enforce the right to redeem. He obtained against the *talukdar*, as such heir, a decree for possession of nine of the villages in the *ilaka* (*Amanat Bibi* v. *Imdad Husain*, I. L. R. 15 Calc. 800; L. R. 15 I. A. 106), but the tenth was in the hands of the under-proprietors above-mentioned whom he sued for possession of it in 1887:—*Held*, that, inasmuch as the defendants were, by the decree of 1866, established as owners of an under-proprietary right, becoming thereby entitled to a sub-settlement which they had obtained, their possession was adverse to any one claiming to be *talukdar* or superior proprietor of the same estate, as well as to others. The defendant's possession, with title, dating from 1866, at latest, the lapse of time barred this suit under Act XV of 1877. IMDAD HUSAIN *v.* AZIZ-UN-NISSA.

[23 Calc. 483
[L. R. 23 I. A. 8

11.—Art. 144.—*Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Suit brought by the assignee to recover possession—Effect of Mamlatdar's order against mortgagor.*] One *R* who was the owner of the land in dispute, mortgaged it to *B* in July, 1870. In October, 1876, the defendant, a tenant of the land, obtained an injunction against *R* restraining him from interfering with his (the defendant's) possession, in a possessory suit which was filed in the Mamlatdar's Court in May, 1876. In July, 1877, *B* obtained a decree on his mortgage, and in execution he got possession of the property from *R* (the mortgagor) in June, 1879. The plaintiff, who was the assignee of both *B* and *R* (mortgagee and mortgagor), sued the defendant in ejectment in September, 1888. Both the lower Courts allowed the claim. On second appeal:—*Held*, that ever since the proceedings in the Mamlatdar's Court commencing with the defendant's suit in May, 1876, the possession of the defendant, whatever may have been its nature originally, was distinctly adverse to *R* and also to the plaintiff, who as assignee might have taken possession at any time under the mortgage, and the present suit not having been brought until September, 1888, was barred by the Limitation Act (XV of 1877). BAPU BIN MAHADAJI *v.* MAHADAJI VASUDEO.

[18 Bom. 348

12.—Art. 144.—*Manager—Land appertaining to muth—Sale of miras malki (ownership of miras tenure)—Mirasdar on inam estates, Position of—Limitation Act (XV of* 1877), *s.* 28—*Right to recover rent.*] In 1860, *K*, the manager of a *muth*, sold to *B* the *miras malki* (ownership of *miras* tenure) of certain lands appertaining to the *muth* subject to the payment of assessment. *K* died in the same year and was succeeded by *R* as manager. In 1864, *R* sued *B* to set aside the sale. The suit was dismissed in 1865, and *B's miras* right was confirmed. In 1871, one *G* obtained a decree declaring him to be the legal manager of the *muth* and removing *R* who was held to have had no title to the office. In 1887, the plaintiff, who succeeded *G* in the management of the *muth*, brought the present suit against the defendant, who was the vendee of *B*, to recover possession of the lands or to recover assessment for three years

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

previous to the suit. The defendant pleaded that the suit was barred by limitation. The plaintiff contended that as there was no lawful manager between 1860 and 1875, that period ought to be omitted in computing the period of limitation, and that as under the deed of sale to *B* the vendee became a tenant, the possession of the vendee and of the defendant could not be adverse:—*Held*, that if defendant's possession was adverse to the ownership of the *muth* during twelve years after *K's* death, the operation of the law of limitation would not be affected by the fact that there was no legal manager during that time:—*Held*, further, that in the Bombay Presidency the *mirasdar* on *inam* estates is only "a tenant at quit-rent or at a reasonable rent not subject to ejectment so long as he pays it;" and as there was nothing in the sale-deed passed by *K* to *B* which required a different construction to be put on the *miras* tenure created by it, *B's* possession under it could not be adverse to the *muth* until there was an assertion by the grantee of his claim to be a permanent tenant, up to which time he would, in the eye of the law, be regarded as a tenant-at-will. But the suit brought by *R* in 1864 showed that *B* was then asserting his *mirasi* right, and as more than twelve years had elapsed between that date and the bringing of the present suit, the plaintiff's right as representing the *muth* to recover immediate possession was barred:—*Held*, further, that the plaintiff's right to recover three years' arrears of rent as reserved by the *mirasi* grant was not affected, as the effect of s. 28 of the Limitation Act (XV of 1877) was to extinguish the plaintiff's right, as claimed by him, to treat the grant as null and void. VITHALBOWA *v.* NARAYAN DAJI THITE.

[18 Bom. 507

13.—Art. 144.—*Possession of Hindu widow—Suit by reversionary heir.*] A Hindu proprietor died, leaving a widow, and also a son who died leaving a widow, a few years after his father, whose widow, either during the son's lifetime, or on his death, took possession of the property left by the father, and remained in possession till she died, having held it for about seventeen years. This she did notwithstanding the claim of the son's widow, whose suit against her for the property was dismissed, on the ground of limitation, in 1875. Before her death she transferred part of the property by gift, and was said to have transferred another part by will. On a question as to the capacity in which she had taken and retained possession, it was found that she had done so absolutely and without any assertion of a right, which she had not, to a widow's estate. Suits by the reversionary heirs, whom the son's widow joined, were held barred by limitation, on the ground that the possession taken had been adverse to them. Not only was any claim, through the deceased son, barred, but the rights of the reversionary heirs also, the possession by the father's widow not having been shown to be that of the limited interest of a

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

widow LACHHAN KUNWAR *v.* MANORATH RAM; LACHHAN KUNWAR *v.* ANANT SINGH.

[22 Calc. 445
[L. R. 22 I. A. 25

14.—Art. 144.—*Estate in the possession of the widow of the last male survivor of a family co-parcenary—Possession, first obtained through her, held, adversely to the heirs, by the widow of another co-parcener.*] The plaintiffs were in the line of the heirs of an ancestor from whom, through his daughter, their grandmother, they were descendants in the third generation. In 1888 they sued the defendants who were in possession to recover what had been part of the family estate, alleging title according to the Mitakshara. A question whether the plaintiffs were not barred by limitation depended on whether the now disputed part of the family property had not been from the year 1843 in the adverse possession of the widow of one of their great uncles. This widow, after transferring that part of the property to a person through whom the defendants made title, died in 1886. She was the widow of the elder of two brothers, the last co-parceners of the family, who, being sons of the said ancestor, had at one time held the family estate. This elder brother, her husband, died in 1826. His younger brother survived him, and, having taken the whole estate by survivorship, died in 1833, leaving a widow, who died in 1843. The latter widow having inherited the estate from her husband for her life estate, there being no co-parcener left, gave a share of her inheritance to the abovementioned widow of the elder brother. So assigned, the property remained, with the addition in 1843 of the share which the younger brother's widow had kept for herself, in the possession of the other widow, the one first abovementioned. After many years this widow transferred it to her own brother, of whom the present defendants were the heirs and representatives. It was decided below that it had not been in the right of a Hindu widow taking by inheritance from her husband that the elder brother's widow had obtained, and had dealt with, the property. A widow's estate for life never constituted a possession adverse to the reversionary heir, but here the widow, through whom the defendants claimed, had been from 1843 in adverse possession for more than twelve years. The suit was therefore barred under the Limitation Act XV of 1877. This judgment was affirmed by their Lordships. MAHABIR PERSHAD *v.* ADHIKARI KOER.

[23 Calc. 942

15.—Art. 144.—*Purchase by conditional sale—Vendor remaining in possession as tenant holding over—Possession not shown to be adverse.*] In 1866, the plaintiff bought the lands in suit by conditional sale-deed, repayable in ten years, from a third party who, under the same document, became his tenant of the said lands. Before the expiration of the ten years the vendor died, and his widow sold her right in the lands and gave pos-

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

session to *G*, the transferor of the second defendant. On the expiration of the ten years the sale to plaintiff became absolute, and *G* continued to hold over after the expiry of the lease, but there was no evidence to show that *G's* possession ever became hostile to plaintiff:—*Held*, that the fact that plaintiff's title ripened into full ownership on the expiration of the ten years provided by the sale deed did not alter the character of the tenure of *G*; that his possession never became hostile to plaintiff; that *G* acknowledged the plaintiff's title in his sale-deed dated 1881 to the second defendant; and that the suit was not barred. ANANTHA BHATTA *v.* HOLEYA DEYYU.

[19 Mad. 437

16.—Art. 144.—*Landlord and tenant—Permanent tenant—Notice to pay enhanced rent or quit the land—Denial of landlord's right to enhance rent—Suit to recover enhanced rent—Limitation Act, s.* 23.] An *inamdar* gave his permanent tenant notice to pay enhanced rent or quit the land on a certain date. The tenant denied the liability to pay enhanced rent, and, stating that he held the land on payment of Government assessment only, refused to quit. The *inamdar* more than twelve years after the date mentioned in the notice, sued the tenant to recover enhanced rent:—*Held*, that the plaintiff's (*inamdar's*) right to enhance the rent and to recover the land in default of payment of such rent was barred by limitation, the tenant, so far as the right was concerned, having been holding adversely to him for more than twelve years:—*Held*, also, that s. 23 of the Limitation Act (XV of 1877) had no application to the case. GOPALRAO KRISHNA RAJOPADHE *v.* MAHADEVRAO BALLAL MULE.

[21 Bom. 394

17.—Art. 144.—*Suit for possession of land by an auction-purchaser, who obtained symbolical possession—Code of Civil Procedure* (1882), *ss.* 318 *and* 319—*Limitation Act, Art.* 138.] In a suit for possession of land by an auction-purchaser, who had obtained symbolical possession, the defendant objected that the suit was barred by limitation, it not having been brought within twelve years from the date of the auction-purchase:—*Held*, that Art. 144, Sch. II of the Limitation Act (XV of 1877) applied to the case, and that, as the suit was brought within twelve years from the date when the auction-purchaser obtained symbolical possession, it was not barred by limitation. HARI MOHAN SHAHA *v.* BABURALI.

[24 Calc. 715

18.—Art. 144.—*Suit for possession of property purchased at auction sale in execution of a decree—Effect of formal possession in saving limitation—Possession given under Civil Procedure Code* (1882), *ss.* 318 *and* 319.] Where possession of property purchased at auction sale in execution of a decree is formally given by the Court under s. 318 or s. 319 of the Code of Civil Procedure, although the actual possession may remain with the judgment-debtor,

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

the date of the granting of such formal possession forms, as against the judgment-debtor, a fresh starting-point for limitation in respect of a suit for possession of the property sold brought by the auction purchaser or his representative. *Juggobundhu Mukerjee* v. *Ram Chunder Bysack*, I. L. R. 5 Calc. 584; and *Joggobundhu Mitter* v. *Purnanund Gossami*, I. L. R. 16 Calc. 530, referred to. MANGLI PRASAD *v.* DEBI DIN.

[19 All. 499

19.—Art. 144.—*Alienation by a Hindu widow—Subsequent adoption by widow—Suit by the adopted son to recover possession—Limitation Act, Sch. II, Arts.* 140 *and* 141.] The childless widow of a separated Hindu being in possession of his property as his heir, alienated it in the year 1868. Twenty years afterwards (13th May, 1888) she adopted a son, who in 1890 brought the present suit to recover the alienated property:—*Held*, that the suit was not barred by limitation. *Per* FARRAN, J.—Whether Art. 140 or Art. 144 of Sch. II of the Limitation Act (XV of 1877) applied to the case, the suit was not barred; for if it fell under Art. 140, the possession of the defendants adverse to the widow could not affect the plaintiff's rights, and if it fell, as it seemed to do, under Art. 144, the possession of the defendants did not become adverse to the plaintiff until he became entitled to possession of the property upon his adoption. *Srinath Kur* v. *Prosunno Kumar Ghose*, I. L. R. 9 Calc. 934; and *Kokilmoni Dassia* v. *Manick Chandra Joaddar*, I. L. R. 11 Calc. 791, followed. *Per* CANDY, J.—The suit was governed by Art. 144, under which the period of limitation began to run from the time when the possession of the defendants became adverse to the plaintiff on his adoption in 1888. Assuming that the possession of the defendants was adverse to the widow, that fact did not affect the plaintiff, who did not derive his right to sue from or through her. MORO NARAYAN JOSHI *v.* BALAJI RAGHUNATH.

[19 Bom. 809

20.—Art. 144.—*Suit by shebait for possession of debuttor property alienated by former shebait—Hindu law, Endowment—Position of Hindu idol—Limitation Act, Art.* 184.] A suit was brought in 1892 by the *shebait* of an idol for recovery of *khas* possession of *mokurari* property belonging to the idol, and for a declaration that a *darmokurari* executed by the preceding *shebait* in 1857 in respect of the *mokurari* property, the executant professing to act as guardian of her minor son, and a *kobala* executed by her son in respect of the same property in 1875, were invalid and inoperative. The plaintiff was appointed *shebait* in 1888:—*Held*, that the suit was barred by limitation, and it came either under Art. 134 or under Art. 144 of Sch. II of Limitation Act (XV of 1877):—*Held*, that the idol is a judicial person capable of holding property and the possession of the defendants, who professed to derive title not from the idol, but ignoring its rights, must be taken

LIMITATION ACT (XV OF 1877)—*continued.*

(2) ADVERSE POSSESSION—*continued.*

to have become adverse to the idol from the dates of the two alienations; and, although it is true that an idol holds property in an ideal sense, and its acts relating to any property must be done by or through its manager or *shebait*, yet that does not show that each succeeding manager gets a fresh start as far as the question of limitation is concerned, on the ground of his not deriving title from any previous manager. *Shidessuree Dabia* v. *Mothoora Nath Acharjo*, 13 Moo. I. A. 270; 13 W. R. P. C. 18; *Prosunno Kumari Debya* v. *Golab Chund Baboo*, 14 B. L. R. 450; 23 W. R. 253; L. R. 2 I. A. 145; *Kannan* v. *Nilukandan*, I. L. R. 7 Mad. 337, approved. NILMONY SINGH *v.* JAGABANDHU ROY.

[23 Calc. 536

21.—Art. 144.—*Diluviation—Subordinate tenure—Suit for recovery of possession of land—Reformation on the site of plaintiffs' villages—Burden of proof.*] In a suit, brought by the plaintiffs on the 10th December, 1888, for recovery of possession of three plots of land, on the allegation that the lands in dispute were re-formations on the site of their villages of K and M, which were let out in *patni* and *darpatni* to third parties in 1868, and that the rights of the *patnidar* and the *darpatnidar* were re-acquired by them in the years 1878, 1880, 1883 and 1892, the defence was that the suit was barred by limitation, and that the lands were not re-formation, but accretion to the defendants' village of C:—*Held* that, inasmuch as a grantor of a subordinate tenure is not bound to sue for trespasses committed against his tenant during the continuance of the tenure, and that his right of action accrues when the tenancy comes to an end, the suit was not barred by limitation:—*Held*, also, that as the plaintiffs' title to, and possession of, the villages of K and M, down to the time of their diluviation, was not denied, and as it was found that the disputed plots of land were part of the said villages, it was not incumbent on the plaintiffs to prove possession of the lands in dispute previous to the diluviation, but the onus lay on the defendants to prove adverse possession for more than twelve years prior to the institution of the suit. *Woomesh Chunder Goopto* v. *Raj Narain Roy*, 10 W. R. 15, and *Davis* v. *Abdul Hamed*, 8 W. R. 55, referred to. GUNGA KUMAR MITTER *v.* ASUTOSH GOSSAMI.

[23 Calc. 863

22.—Art. 144.—*Suit by hereditary trustee to set aside invalid alienaton—Alienation of property of religious endowment.*] In a suit brought by an hereditary trustee to set aside certain alienations of the trust property made by his predecessors in title, and to have it declared that he was entitled to the sole management of the trust property, it appeared that the property was held jointly by plaintiff's father and by the mother of the first defendant. On the 17th September, 868, the first defendant's mother alienated her right to the joint management to the first defendant, who, however, never got possession until the 13th February, 1869, on which date plaintiff's father alienated his right to joint management to the first defendant; the plaintiff was born in 1875:—*Held*, that the hereditary right of plaintiff was a personal right accruing on the death of his predecessor, *viz.*, his father, and that, as limitation ran from that date, the suit was not barred. VELU PANDARAM *v.* GNANASAMBANDA PANDARA SANNADHI; GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM.

[19 Mad. 243

1.—Art. 147.—*Mortgage—Bond—Charge on immoveable property—Limitation Act, Art.* 132.] Where a bond given for a loan contained the following condition as to security and repayment of the money:—"The security pledge (*taran gahan*) for this is our own property, Survey Nos. 170 and 778 in the vilage Ped, on all the land of which two numbers do you take satisfaction for the said money; and if it should be insufficient, I will personally make satisfaction":—*Held*, that the transaction was a mortgage governed by Art. 147, Sch. II of the Limitation Act (XV of 1877), and not a charge governed by Art. 132. *Khemji* v. *Rama*, I. L. R. 10 Bom. 519; and *Rangasami* v. *Muttukumarappa*, 10 Mad. 509, dissented from; *Motiram* v. *Vitai* 13 Bom. 90; *Venkatesh* v. *Narayan*, I. L. R. 15 Bom. 183; and *Bavaji* v. *Tatya*, P. J. 1891, p. 35, followed. DATTO DUDHESHWAR *v.* VITHU.

[20 Bom. 408

2.—Art. 147.—*Usufructuary mortgage—Personal covenant to pay.*] Where a usufructuary mortgage contains a personal undertaking to pay the amount secured thereby, the limitation applicable to a suit brought on the mortgage is governed by Art. 147, Limitation Act XV of 1877. *Sivakami Ammal* v. *Gopala Savundram Ayyan*, I. L. R. 17 Mad. 131, referred to. UDAYANA PILLAI *v.* SENTHIVELU PILLAI.

[19 Mad. 411

——, Art. 148.

See S. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

[18 All. 458

——, Art. 148.—*Suit for redemption—Mortgagee purchasing equity of redemption from one without title to it—Adverse possession of mortgagee against true owner of equity of redemption.*] In the absence of any act showing that the mortgagee is asserting himself against the owner of the equity of redemption, his possession is not adverse against the latter as regards limitation. The mere assertion of his claim by the mortgagee would not affect the right of the real owner of the equity of redemption where a person having no right in the property pretends to sell to the mortgagee the equity of redemption. PANDU LAKSHMAN MASUREKAR *v.* ANPURNA.

[21 Bom. 793

LIMITATION ACT (XV OF 1877)— *continued.*

1.—Art. 149.—*Encroachment on public highway—Suit by municipality to remove encroachment—Limitation Act, Art. 144—Title by adverse possession.*] The Municipality of Madras sued to recover, as forming part of a highway, a strip of land adjoining the house of the defendant on which a *pial* had been erected more than forty-five years before the suit:—*Held*, assuming that the land in question was originally included in the street, that the defendant had acquired a title by adverse possession against the municipality, which was not entitled to call in aid the provisions of the Limitation Act, Sch. II, Art. 149. MUNICIPAL COMMISSIONERS *v.* SARANGAPANI MUDALIAR.

[19 Mad. 154

2.—Art. 149.—*Suit by or on behalf of Secretary of State for India.*] Article 149 of the Limitation Act applies only to suits brought by, or on behalf of, the Secretary of State. SECRETARY OF STATE FOR INDIA *v.* KOTA BAPANAMMA GARU.

[19 Mad. 165

——, Art. 152.

See s. 12.

[19 All. 342

See APPEAL—DECREES.

[23 Calc. 279, 406

——, Art 159.—*Suit under Chap. XXXIX, ss. 532—538 of the Civil Procedure Code, (1882)—Application for leave to defend suit—Date of service of summons—Sheriff's return of service.*] In a suit under Chap. XXXIX of the Civil Procedure Code (summary procedure on negotiable instruments) the defendant obtained an *ex-parte* order on the 9th January, 1896, for leave to appear and defend the suit. The plaintiff, on the 23rd January, 1896, obtained an order calling on the defendant to show cause why the order of the 9th January, 1896, should not be set aside, on the ground that the application was not made within ten days from the date of the service of summons. The date of service as shown in the Sheriff's return was the 23rd December, 1895. The defendant alleged he had not come to know of the service till the 5th January, 1896, as he was not at that time residing at his dwelling house when the service was alleged to have been effected:—*Held*, that as regards limitation, the only date to which reference could be made was the date shown in the Sheriff's return, and that the Court could not at the present stage of the case allow the defendant to show a state of things different from that appearing in his petition. MADHUB LALL DURGUR *v.* WOOPENDRANARAIN SEN.

[23 Calc. 573

——, Art. 166.

See ART. 178.

[24 Calc. 707

LIMITATION ACT (XV OF 1877)— *continued.*

——, Art. 168.—*Application for re-admission of appeal dismissed on failure to deposit costs of paper book—High Court Rules, Part II, Chap. VIII, Rule 17—Civil Procedure Code* (1882), *s.* 558.] The appellant in an appeal from an original decree having failed to deposit the estimated amount of costs for the preparation of the paper book, the appeal was dismissed under Rule 17 of the High Court Rules, Part II, Chap. VIII. An application for re-admission of the appeal was then made on behalf of the appellant; and a rule was granted by a Division Bench calling upon the opposite side to show cause:—*Held* (by PRINSEP and GHOSE, JJ.), that the application was not one under s. 558 of the Civil Procedure Code; that it was not barred under Art. 168 of the Limitation Act; that it was an application under the Rules of the Court; and that the law of limitation did not apply to such an application. RAMHARI SAHU *v.* MADAN MOHAN MITTER.

[23 Calc. 339

——, Art. 170.

See s. 12.

[18 Mad. 374

——, Art. 170 and Art. 178.—*Application for leave to appeal in formâ pauperis.*] Plaintiffs filed a suit for partition, which was dismissed on the 9th December, 1890. On the 17th March, 1891, plaintiffs presented an appeal to the High Court on a Court-fee stamp of Rs. 10. On the 18th January, 1892, the High Court held that the memorandum of appeal was insufficiently stamped, being chargeable with an *ad-valorem* stamp on the value of the plaintiffs' share. On the 16th February, 1892, plaintiffs applied for leave to appeal *in formâ pauperis*. This application was granted *ex parte*. At the hearing of the appeal, however, the respondent contended that the pauper appeal was time-barred:—*Held*, that the application for leave to appeal *in formâ pauperis* having been presented beyond the thirty days allowed by Art. 170 of the Limitation Act (XV of 1877), was barred by limitation. The pauper appeal could not therefore be proceeded with. Article 178 of the Limitation Act had no application to the present case. MAHADEV BALVANT *v.* LAKSHMAN BALVANT.

[19 Bom. 48

1.—Art. 177.—*Civil Procedure Code* (1882), *ss.* 596, 598 *and* 599—*Limitation Act* (*XV of* 1877), *s.* 7—*Application to admit appeal to Privy Council—Disability by reason of minority—Deduction of time.*] In 1885 the High Court in appeal passed a decree to which a minor under the Court of Wards was a party. Having attained his majority in 1894, he sought to appeal to Her Majesty in Council, and presented an appeal within six months of the date when he attained majority. On an application under the Civil Procedure Code, s. 598:—*Held*, that the application was barred by limitation. THURAI RAJAH *v.* JAINILABDEEN ROWTHAN.

[18 Mad. 484

LIMITATION ACT (XV OF 1877)— *continued.*

2.—Art. 177.—*Application for leave to appeal to Privy Council—Time for presentation of application—Limitation Act (XV of 1877), ss. 5 and 12—Civil Procedure Code* (1882), *s.* 598.] An application for leave to appeal to the Privy Council must be made within six months from the date of decree. Such an application is not an appeal, and in computing the period of limitation, the time required for obtaining a copy of the decree cannot be excluded. MOROBA RAMCHANDRA *v.* GHANASHAM NILKANT NADKARNI.

[19 Bom. 301

——, Art. 178.

See ART. 170.

[19 Bom. 48

See PARTITION—NATURE OF PROCEEDINGS.

[22 Calc. 425

1.—Art. 178.—*Amendment of decree—Civil Procedure Code* (1882), *s.* 206—*Suit for mesne profits while plaintiff is out of possession.*] There is no limitation for an application under s. 206 of the Civil Procedure Code, to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment *A* instituted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court, gave her the declaration sought for, but it contained no direction as to the possession, although the judgment stated that she was entitled to possession. *A's* son (having been substituted in her place) applied to have the decree amended. The lower Appellate Court held that the application was barred by limitation. The High Court on appeal upheld the lower Court's order, not on the ground of limitation, but on the ground that the application to amend the decree had been made in the wrong Court *A's* son then instituted a fresh suit against the same parties for declaration of title, a perpetual injunction, and for mesne profits:—*Held*, that the plaintiff was entitled to have the decree amended under s. 206, Civil Procedure Code, and that, though the plaintiff's claim to possession was barred, yet his right was not extinguished, and he having therefore a subsisting title was entitled, though out of possession, to maintain the suit so far as it sought to recover mesne profits. KALU *v.* LATU.

[21 Calc. 259

2.—Art. 178.—*Decree as originally framed incapable of execution—Amendment of decree—Application for execution of amended decree.*] Where a decree as originally framed was found by the High Court to be incapable of execution, and was not finally amended by that Court, so as to become capable of execution, until nearly twelve years after it was passed, it was *held* that an application to execute such decree which was made within three years from the date of the amendment of the decree was within time, the rule of limitation applicable being that prescribed by Art. 178 of Sch. II of Act XV of 1877. MUHAMMAD SULEMAN KHAN *v.* MUHAMMAD YAR KHAN.

[17 All. 39

LIMITATION ACT (XV OF 1877)— *continued.*

3.—Art. 178.—*Applications for probate.*] The Limitation Act does not apply to applications for probate, and the applications referred to in Art. 178 of Sch. II of that Act are applications under the Code of Civil Procedure. *Janaki v. Kesavalu*, I. L. R. 8 Mad. 207; *Bai Manekbai v. Manekji Kavasji*, I. L. R. 7 Bom. 213; and *In the Matter of the Petition of Ishan Chunder Roy* I. L. R. 6 Calc. 707, followed. GNANAMUTHU UPADESI *v.* VANA KOILPILLAI NADAN.

[17 Mad. 379

4.—Art. 178.—*Application for order absolute for sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 89.*] Article 178 of Sch. II of the Limitation Act, 1877, does not apply to an application for an order absolute for the sale of mortgaged property under s. 89 of the Transfer of Property Act, 1882. *Bai Manekbai v. Manekji Kavasji*, I. L. R. 7 Bom. 213, approved. RANBIR SINGH *v.* DRIGPAL.

[16 All. 23

5.—Art. 178.—*Transfer of Property Act (IV of 1882), s. 89—Application for an order absolute for sale of mortgaged property.*] An application under s. 89 of the Transfer of Property Act (IV of 1882) to have a mortgage-decree for sale made absolute is not governed by Art. 178, Sch. II of the Limitation Act, 1877. That article is limited to applications under the Code of Civil Procedure. *Bai Manekbai v Manekji Kavasji*, I. L. R. 7 Bom. 213; and *Ranbir Singh v. Drigpal*, I. L. R. 16 All. 23, approved. In dealing, however, with such an application, the Court may be guided by considerations as to whether any delay on the part of the mortgagee has not been unreasonable, so as to bring it within the rules applied in such cases by Courts of Equity. So long as the final order for sale is not passed the suit may properly be regarded as pending. TILUCK SINGH *v.* PARSOTEIN PROSHAD.

[22 Calc. 924

6.—Art. 178.—*Decree for possession of immoveable property, execution being contingent on non-payment, of annuity.*] Where a decree was for possession of immoveable property, but its execution was contingent on default being made by the judgment-debtor in the payment year by year of a certain annuity to the decree-holder:—*Held*, that the decree-holder was not obliged to execute such decree once and for all upon the occurrence of the first default, but might execute it on occasion of any subsequent default; also that the limitation applicable to the execution of such decree was that provided for by Art. 178 of Sch. II of the Limitation Act, 1877. *Thakur Das v. Shadi Lal*, I. L. R. 8 All. 56, referred to. MUHAMMAD ISLAM *v.* MUHAMMAD AHSAN.

[16 All. 237

LIMITATION ACT (XV OF 1877)— *continued.*

7.—Art. 178.—*Application for resale in execution of decree—Continuous proceedings.*] Upon an application made on the 28th August, 1891, for execution of a mortgage decree, the mortgaged property was sold, and the judgment-debtors purchased it *benami* at a low price. Thereupon the decree-holders made an application, on the 12th November, 1891, asking the Court to set aside the *benami* purchase and resell the property. The first Court found that the purchase was not *benami*, and confirmed the sale on the 12th April, 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July, 1892. The High Court, in second appeal accepted the finding of the Appellate Court as regards the purchase being *benami*, but upheld the sale with the remark that the said property and any other property of the debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893. On an application for execution made on the 3rd December, 1894, an objection was raised on the ground of limitation:—*Held*, that the application of the 3rd December, 1894, might be regarded as a continuation of the application of the 12th November, 1891, for resale of the property; and as the decree-holders were precluded by the first Court's finding of the 12th April, 1892, from asking for sale until it was reversed by the lower Appellate Court on the 22nd July, 1892, and finally by the High Court on the 4th August, 1893, the application was in time under Art. 178, Sch. II, Act XV of 1877. *Pyaroo Tuhovildarinee* v. *Nazir Hossein*, 23 W. R. 183; *Chandra Prodhan* v. *Gopi Mohan Shaha*, I. L. R. 14 Calc. 385; *Paras Ram* v. *Gardner*, I. L. R. 1 All. 355; *Kalyanbhai Dipchand* v. *Ghanasham Lal Jadunathji*, I. L. R. 5 Bom. 29; and *Chintaman Damodar Agashe* v. *Balshastri*, I. L. R. 16 Bom. 294, referred to. RAGHUNATH SAHAY SINGH *v.* LALJI SINGH.

[23 Calc. 397

8.—Art. 178.—*Renewal of application for execution after intermediate proceedings.*] Certain holders of a decree for sale under s. 88 of the Transfer of Property Act applied for execution of their decree on the 6th of January, 1887, and the application was granted. A third party, however, appeared and filed an objection under s. 278 of the Code of Civil Procedure, which was allowed. Thereupon the decree-holders brought a suit under s. 283 of the Code. They obtained a decree on the 5th of June, 1888; but the intervenor appealed, and the final decree in appeal was not passed until the 28th of May, 1892. On the 27th of April, 1892, the decree-holders again applied for execution of the decree:—*Held*, that execution was time-barred under Art. 178 of the second schedule to Act XV of 1877. DESRAJ SINGH *v.* KARAM KHAN.

[19 All. 71

9.—Art. 178.—*Application to set aside a sale by a person interested in the sale—Bengal Tenancy Act (VIII of 1885), s. 173—Limitation Act, Art. 166.*] An application to set aside a sale under s. 173 of the Bengal Tenancy Act is governed by Art. 178, Sch. II of the Limitation Act, and should be made within three years from the date when the right to apply accrues. CHAND MONEE DASYA *v.* SANTO MONEE DASYA.

[24 Calc. 707

——, Art. 179.

		Col.
1.	Period from which Limitation runs	748
	(*a*) Continuous Proceedings	748
	(*b*) Where there has been an Appeal	750
	(*c*) Where previous Application has been made	751
	(*d*) Decrees for Sale	751
2.	Nature of Application	751
	(*a*) Generally	751
	(*b*) Irregular or Defective Applications	752
3.	Step in Aid of Execution	752
4.	Order for Payment at Specified Dates	757

See s. 7.

[20 Bom. 383

See ART. 122.

[24 Calc. 473

See BENGAL TENANCY ACT, SCH. III, ART. 6.

[22 Calc. 644

See PARTITION—NATURE OF PROCEEDINGS.

[22 Calc. 425

(1) PERIOD FROM WHICH LIMITATION RUNS.

(*a*) CONTINUOUS PROCEEDINGS.

1.—Art. 179.—*Execution stayed by reason of injunction for more than three years—Revival of previous application.*] A decree-holder in execution of his decree attached a decree held by his judgment-debtor. On the 3rd of July, 1888, the decree-holder applied for execution of his decree by enforcement of the second decree, and in pursuance of this application obtained attachment of certain property as belonging to the judgment-debtor under the second decree. Subsequently a suit was filed by the son of such judgment-debtor claiming the property as his own, and in that suit an injunction was granted staying execution under the application of the 3rd of July, 1888, until the suit was decided. The application for execution was meanwhile struck off, but the attachment was maintained. On the 19th of March, 1892, the suit was dismissed, and the injunction came to an end. On the 29th of October, 1892, a fresh application was made for execution:—*Held*, that this second application was not barred by limitation, but was to be regarded as an application to renew the proceedings commenced by the former application, which had been suspended by the act of the Court and not by anything for which the decree-holder was responsible *Peary Mohun Chowdry* v. *Romesh Chunder Nundy*, I. L. R. 15 Calc. 371; *Kalyanbhai Dipchand* v. *Ghana-*

LIMITATION ACT (XV OF 1877)—*continued.*

(1) PERIOD FROM WHICH LIMITATION RUNS—*continued.*

(*a*) CONTINUOUS PROCEEDINGS—*continued.*

shamlal Judhunathji, I. L. R. 5 Bom. 29; and *Paras Ram* v. *Gardner*, I. L. R. 1 All. 355, referred to. LAKHMI CHAND *v.* BALLAM DAS.

[17 All. 425

2.—Art. 179.—*Resistance and obstruction to execution of degree—Suit under s. 331 of Civil Procedure Code* (1882) *to remove obstruction—Failure of such suit—Subsequent application for execution of original decree.*] On the 7th March, 1889, a decree-holder presented a *darkhast* for execution of a decree which awarded him possession of certain immoveable property. This *darkhast* was opposed by a third party, who was in possession of the property. The decree-holder thereupon applied to the Court to have the obstruction removed. This application was registered under s. 331 of the Code of Civil Procedure (Act XIV of 1882), as a suit between the decree-holder as plaintiff and the party who offered the obstruction as a defendant. On the 22nd January, 1891, the decree-holder withdrew this latter suit. Thereupon his *darkhast* of the 7th March, 1889, was struck off the file. On the 12th November, 1892, he presented a second *darkhast* for execution:—*Held*, that the second *darkhast* was barred by limitation. The decree-holder having failed to remove the obstruction under s. 331 of the Code of Civil Procedure, the second *darkhast* could not be treated as a continuance or revival of the first. *Kalyanbhai* v. *Ghanashamlal*, I. L. R. 5 Bom. 29; and *Chintaman* v. *Balshastri*, I. L. R. 16 Bom. 294, distinguished. SHRIVRAM CHINTAMAN *v.* SARASVATIBAI.

[20 Bom. 175

3.—Art. 179.—*Suit to set aside an order in a claim case—Continuation of previous application.*] Upon an application for execution, dated the 13th March, 1891, the judgment-debtor's property having been attached, a claim was preferred by a third party and allowed. The decree-holder brought a suit for a declaration that the property belonged to the judgment-debtor, and the suit was decreed. The decree-holder thereupon made an application for execution on the 16th July, 1894, more than three years after his previous application:—*Held*, that the order in the claim case operated as a temporary bar to the execution-proceedings, and it was not until the removal of that bar by a suit which the decree-holder was compelled to institute that he was placed in a position to proceed with the execution. The present application made subsequently to the removal of the bar should be treated as a continuation of the previous application which was admittedly in time; and the execution was not barred by limitation. *Raghunandun Pershad* v. *Bhuggo Lall*, I. L. R. 7 Calc. 268, distinguished. *Pyaroo Tuhovildarinee* v. *Nazir Hossein*, 23 W. R. 183; *Paras Ram* v. *Gardner*, I. L. R. 1 All. 355; and *Kalyanbhai Dipchand* v. *Ghanshamlal Jadunathji*, I. L. R. 5 Bom. 29, referred to. RUDRA NARAIN GURIA *v.* PACHU MAITY.

[23 Calc. 437

4.—Art. 179.—*Application for execution of a different nature from preceding application.*] A decree-holder in execution of his decree applied, on the 11th January, 1888, for arrest of the judgment-debtor. On the 25th February, 1888, in consequence of the record of the case being required in the High Court, the Court executing the decree struck off that application *suo motu*. On the 23rd February, 1892, the decree-holder again applied for execution of his decree, but this time by attachment and sale of the judgment-debtor's property:—*Held*, that the second application could not be regarded as a continuance of the former application, and that execution of the decree was time-barred. *Krishnaji Raghunath Kothavle* v. *Anandrav Ballal Kolhalkar*, I. L. R. 7 Bom. 293, followed. HAR SARUP *v.* BALGOBIND.

[18 All. 9

(*b*) WHERE THERE HAS BEEN AN APPEAL.

5.—Art. 179.—*Date of final decree or order of the Appellate Court—Execution of decree.*] Certain plaintiffs obtained a decree for pre-emption in respect of four villages. The defendant appealed, and the lower Appellate Court dismissed the appeal. The defendant again appealed, but in his appeal only questioned the decision of the lower Appellate Court in respect of two of the villages in suit. In this second appeal the plaintiff's suit was dismissed as to one of the villages with regard to which the appeal was preferred, and the defendant's appeal was dismissed as to the other:—*Held*, that in respect of all the three villages as to which the final decree stood in favour of the plaintiff, limitation began to run against the decree-holders from the date of the decree in second appeal, and not as to two of them from the date of the lower Appellate Court's decree. *Hur Proshaud Roy* v. *Enayet Hossein*, 2 C. L. R. 471; *Sangram Singh* v. *Bujharat Singh*, I. L. R. 4 All. 36; and *Mashiat-un-nissa* v. *Rani*, I. L. R. 13 All. 1, distinguished. BADI-UN-NISSA *v.* SHAMS-UD-DIN.

[17 All. 103

6.—Art. 179.—*Final decree of the Appellate Court—Appeal as to portion of the claim disallowed.*] *A* brought a suit against *B* for a sum of money, and obtained a decree for a portion of the amount claimed. On the 30th November, 1891, the plaintiff appealed as to the balance of his claim; but the appeal was dismissed by the District Court on the 1st June, 1892, and by the High Court on the 31st May, 1894. On an application, on the 1st June, 1895, by the assignee of the original decree-holder, to execute the said decree, an objection was raised by the judgment-debtor that execution was barred by lapse of time:—*Held*,

LIMITATION ACT (XV OF 1877)—*continued.*

(1) PERIOD FROM WHICH LIMITATION RUNS—*concluded.*

(*b*) WHERE THERE HAS BEEN AN APPEAL—*concluded.*

that Art. 179, Sch. II, cl. (2) of the Limitation Act applied to the case, the period of limitation ran from the date of the final decree of the Appellate Court, and the application for execution, being within three years from that date, was within time. *Sakhalchand Rikhawdas* v. *Velchand Gujar*, I. L. R. 18 Bom. 203, followed. HARKANT SEN *v.* BIRAJ MOHAN ROY.

[23 Calc. 876

(*c*) WHERE PREVIOUS APPLICATION HAS BEEN MADE.

7.—Art. 179.—*Admission of previous application by competent Court.*] In an application for execution of a decree, it was held that whether rightly or wrongly a previous application having been admitted and registered, and attachment having been ordered to issue, it was not open to the judgment-debtor to question the validity of the proceedings on the ground of the execution being barred by limitation. *Mungal Pershad Dichit* v. *Girja Kant Lahiri*, I. L. R. 8 Calc. 51; L. R. 8 I. A. 123, referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY.

[23 Calc. 374

(*d*) DECREES FOR SALE.

8.—Art. 179.—*Decree for sale on a mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), ss. 88 and 89.*] The period of limitation for execution of a decree for sale under s. 88 of the Transfer of Property Act begins to run from the date of the granting of an order absolute for sale under s. 89 of the Act, without which order the decree cannot be executed, and not from the date of the decree itself. *Oudh Behari Lal* v. *Nageshar Lal*, I. L. R. 13 All. 278; and *Mulchand* v. *Mukta Pal Sing*, Weekly Notes, All. (1896) 100, referred to. MAHABIR PRASAD *v.* SITAL SINGH.

[19 All. 520

(2) NATURE OF APPLICATION.

(*a*) GENERALLY.

9.—Art. 179.—*Application in accordance with law—Succession Certificate Act (VII of 1889), s. 4—Application for execution by legal representative of decree-holder without certificate.*] An application for execution of a decree made by the legal representatives of a deceased decree-holder, without the production of a certificate under the Succession Certificate Act (VII of 1889), is nevertheless one made "in accordance with law" within the meaning of Art. 179, cl. 4 of the Limitation Act (XV of 1877). BALKISHAN SHIWA BAKAS *v.* WAGARSING.

[20 Bom. 76

10.—Art. 179.—*Application for restitution under a decree—Civil Procedure Code (1882), s. 583—Period of limitation.*] Applications made to obtain restitution under a decree in accordance with Civil Procedure Code, s. 583, are proceedings in execution of that decree, and are governed by the Limitation Act, Sch. II, Art. 179. VENKAYYA *v.* RAGAVACHARLU.

[20 Mad. 448

(*b*) IRREGULAR OR DEFECTIVE APPLICATIONS.

11.—Art. 179.—*Defective application returned for amendment — Civil Procedure Code 1882), ss. 235 and 245.*] In execution of a decree. the judgment-debtor's property was put up to sale on the 15th December, 1890, but no sale took place. and the case was struck off. On the 7th October, 1893, an application for execution was presented, but all the particulars required under s. 235 of the Civil Procedure Code not having been given, the application was returned to the decree-holder for amendment under s. 245, and a week's time, from 30th October, was allowed for the purpose. The amended application was not put in within the time fixed, but on the 10th January, 1894, a fresh application was presented in due form with the application of the 7th October, 1893, attached thereto:—*Held*, the application of the 7th October, 1893, was not made "in accordance with law" within the terms of Art. 179 (4), Sch. II of the Limitation Act (XV of 1877), and the execution was barred by limitation. *Kifayat Ali* v. *Ram Singh*, I. L. R. 7 All. 359; *Pirjade* v. *Pirjade*, I. L. R. 6 Bom. 681; *Asgar Ali* v. *Trailokyanath Ghose*, I. L. R. 17 Calc. 631, referred to. *Syud Mahomed* v. *Syud Abedoolah*, 12 C. L. R. 279, distinguished. *Fuzloor Ruhman* v. *Altaf Hossen*, I. L. R. 10 Calc. 541, commented on. *Rama* v. *Varada*, I. L. R. 16 Mad. 142; and *Ramanadan* v. *Periatambi*, I. L. R. 6 Mad. 250, dissented from. GOPAL SAH *v.* JANKI KOER.

[23 Calc. 217

12.—Art. 179.—*Applications for execution made without any representative of the deceased judgment-debtor being brought on to the record—Civil Procedure Code (1882), ss. 234 and 248.*] Applications for the execution of a decree made after the death of the judgment-debtor, and without either any representative of the judgment-debtor being brought upon the record, or there being any subsisting attachment of the property against which execution is sought, are not good applications for the purpose of saving limitation. *Sheo Prasad* v. *Hira Lal*, I. L. R. 12 All. 440, distinguished. MADHO PRASAD *v.* KESHO PRASAD.

[19 All. 337

(3) STEP IN AID OF EXECUTION.

13.—Art. 179, cl. 4.—*Application by decree-holder for rejection of petition of judgment-debtor objecting to sale, and for confirmation of sale.*] An application by a decree-holder, praying that a petition of the judgment-debtor to set aside the

LIMITATION ACT (XV OF 1877)—*continued.*

(3) STEP IN AID OF EXECUTION—*continued.*

sale of property belonging to him should be rejected and the sale be confirmed, is an application falling within the meaning of Art. 179, cl. 4 of Sch. II of the Limitation Act XV of 1877. An application for execution of the decree made within three years from such a former application is not barred. *Kewal Ram* v. *Khadim Husain*, I. L. R. 5 All. 576, followed. GOBIND PERSHAD *alias* GOBIND LAL *v.* RUNG LAL.

[21 Calc. 23

14.—Art. 179, cl. 4.—*Defect in application for execution.*] Where there has been in fact an application for execution made by the party entitled to make it, it is to be regarded as a step in aid of execution within the meaning of the Limitation Act, Art. 179, although by mistake a deceased judgment-debtor is named as the person against whom execution is sought. SAMIA PILLAI *v.* CHOCKALINGA CHETTIAR.

[17 Mad. 76

15.—Art. 179, cl. 4.—*Request for payment of money realised in satisfaction of a decree.*] A request for the payment of money realised in satisfaction of a decree is sufficient to keep the decree alive, being a step in aid of execution; *Venkatarayalu* v. *Narasimha*, I. L. R. 2 Mad. 174, approved and followed. Whether a particular Act is or is not an application for, or step in aid of, execution depends upon the nature of the act rather than the time at which it may possibly be done. *Hem Chunder Chowdhry* v. *Brojo Soondury Dabee*, I. L. R. 8 Calc. 89, qualified. KOORMAYYA *v.* KRISHNAMMA NAIDU.

[17 Mad. 165

16.—Art. 179, cl. 4.—*Application to strike off pending execution with liberty to make fresh application—Application made before Act VI of* 1892.] *Held*, that an application made before the passing of Act VI of 1892 by a decree-holder to the Court executing the decree to strike off a pending application for execution with liberty to make a fresh application for execution of the same decree, was an application in accordance with law to take a step in aid of execution of the decree within the meaning of Act XV of 1877, Sch. II, Art. 179, cl. 4. RAM NARAIN RAI *v.* BAKHTU KUAR.

[16 All. 75

17.—Art. 179, cl. 4.—*Application for transfer of decree — Civil Procedure Code* (1882), *s.* 223.] An application to the Court which passed a decree for its transfer to another Court for execution under s. 223 of the Civil Procedure Code, is a step in aid of execution, and sufficient to keep the decree alive within the meaning of the Limitation Act. Sch. II, Art. 179, cl. 4. *Nilmony Singh Deo* v. *Biressur Banerjee*, I. L. R. 16 Calc. 744, explained; *Collins* v. *Maula Baksh*, I. L. R. 2 All. 284; and *Latchman Pundeh* v. *Maddan Mohun Shye*, I. L. R. 6 Calc. 513, referred to and followed. CHUNDRA NATH GOSSAMI *v.* GURROO PROSUNNO GHOSE.

[22 Calc. 375

18.—Art. 179, cl. 4.—*Application to receive poundage fee—Application for the return of a decree partially executed by the Court where transferred for execution—Civil Procedure Code* (1882), *s.* 223.] Neither an application by a decree-holder to receive poundage fees from him in respect of some of his judgment-debtor's property purchased by himself, nor an application for the return to the decree-holder of a decree made to a Court to which it has been transferred for execution, and by which it has been partially executed, is a step in aid of execution within the meaning of the Limitation Act, Sch. II, Art. 179, cl. 4. *Krishnayyar* v. *Venkayyar*, I. L. R. 6 Mad. 81, distinguished. AGHORE KALI DEBI *v.* PROSUNNO COOMAR BANERJEE.

[22 Calc. 827

19.—Art. 179, cl. 4.—*Application to receive poundage fee—Application to set-off the purchase-money against the decree, instead of paying it into Court.*] Neither an application by a decree-holder to receive a poundage fee from him in respect of the judgment-debtor's property purchased by himself, nor an application by him to be allowed to set off the purchase-money against the decree, instead of paying it into Court, is a step in aid of execution within the meaning of the Limitation Act, Sch. II, Art. 179, cl. 4. *Aghore Kali Debi* v. *Prosunno Coomar Banerjee*, I. L. R. 22 Calc. 827, followed. *Radha Prosad Singh* v. *Sandar Lal*, I. L. R. 9 Calc. 644, distinguished. ANANDA MOHAN ROY *v.* HARA SUNDARI.

[23 Calc. 196

20.—Art. 179, cl. 4.—*Payment of deficient Court-fee.*] An application for execution of a decree was presented on the 17th July, 1890. A notice under s. 248 of the Code of Civil Procedure (Act XIV of 1882) was issued on the 18th July, 1890. The process fee for service of the notice being deficient, the decree-holder paid the deficiency on the 29th August, 1890. On the 22nd August, 1893, the decree-holder presented a fresh application for execution:—*Held*, that the second application for execution was time-barred. The payment of the additional Court-fee was not "a step in aid of execution of a decree" within the meaning of cl. 4, Art. 179 of Sch. II of the Limitation Act (XV of 1877). DWARKANATH APPAJI *v.* ANANDRAO RAMCHANDRA.

[20 Bom. 179

21.—Art. 179, cl. 4.—*Applications to be substituted on the record as a party and for notice of execution to issue to representative of judgment-debtor—Civil Procedure Code* (1882), *s.* 230—*Application for execution of decree—Continuous proceedings.*] *A* obtained a decree against *B* upon

LIMITATION ACT (XV OF 1877)—*continued.*

(3) STEP IN AID OF EXECUTION—*continued.*

an award, which directed that the sum of Rs. 1,840 awarded to *A* should be recovered with interest by attachment of the mortgaged property and not by sale, except in case of its being held that the property was not liable to attachment. On the 12th October, 1874, *A* applied for execution of the decree, and thereupon the mortgaged property was attached and placed under the management of the Collector, who paid the proceeds from time to time into Court till 1891. The Court paid the proceeds to *A* on the 25th February, 1876, the 5th February, 1877, and the 7th October, 1877. In 1878, *A* being dead, his son *C* applied to the Court to be made a party to the record and to be allowed to continue the execution-proceedings. In 1880, *C* applied to the Court under s. 248 of the Code of Civil Procedure (Act XIV of 1882) to issue notice to *D* as *B's* heir and legal representative, to show cause why the decree should not be executed against him. *D* did not appear, and an *ex-parte* order was passed for execution to proceed as against him. The Collector continued in management till the 5th February, 1892, when the application (*darkhast*) of 1874 was withdrawn, and a fresh application was made by *C* on the 12th June, 1892. *D* resisted on the ground that the application was time-barred under Art. 179 of the Limitation Act (XV of 1877):—*Held*, that the application of 1892 was not barred by limitation, as the execution-proceedings under the first *darkhast* of 1874 were continuously going on during the whole period that the Collector's management lasted under the orders of the Court, and as each year's payment received by the decree-holder was but a partial step in aid of execution of the decree:—*Held*, further, that the applications made by *C* in 1878 and 1880 were also "steps in aid of execution" within the meaning of Art. 179, cl. 4 of the Limitation Act. KESHAVLAL BECHAR *v.* PITAMBERDAS TRIBHUVANDAS.

[19 Bom. 261

22.—Art. 179, cl. 4.—*Deposit of process-fee.*] A deposit of a process fee is a step in aid of execution within cl. 4 of s. 179 of Sch. II of the Limitation Act. *Ambica Pershad Singh* v. *Surdhari Lal*, I. L. R. 10 Calc. 851, referred to. NARENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY.

[23 Calc. 374

23.—Art. 179, cl. 4.—*Application by decree-holder for leave to bid.*] An application by the decree-holder for leave to bid at the sale in execution of the decree is not a step in aid of execution within the meaning of the Limitation Act, Sch. II, Art. 179. *Toree Mahomed* v. *Mahomed Mabood*, I. L. R. 9 Calc. 730; and *Ananda Mohan Roy* v. *Hara Sundari*, I. L. R. 23 Calc. 196, referred to; *Bansi* v. *Sikree Mal*, I. L. R. 13 All. 211, dissented from. RAGHUNUNDUN MISSER *v.* KALLYDUT MISSER.

[23 Calc. 690

LIMITATION ACT (XV OF 1877)—*continued.*

(3) STEP IN AID OF EXECUTION—*continued.*

24.—Art. 179, cl. 4.—*Application by decree-holder for leave to bid at the auction-sale.*] An application by a decree-holder for leave to bid at the sale of his judgment-debtor's immoveable property is an application to the Court to take a step in aid of execution of the decree and falls within the words of Art. 179, cl. 4 of the Limitation Act (XV of 1877). VINAYAKRAO GOPAL DESHMUKH *v.* VINAYAK KRISHNA DHEBRI.

[21 Bom. 331

25.—Art. 179, cl. 4.—*Application to withdraw a pending proceeding for execution with leave to institute another—Code of Civil Procedure* 1882), *s.* 373.] An application to withdraw a pending proceeding for execution, with leave to institute another at some future time, is not a step in aid of execution within the meaning of the Limitation Act, Sch. II, Art. 179, cl. 4. *Ram Narain Rai* v. *Bakhtu Kuar*, I. L. R. 16 All. 75, dissented from. TARAK CHUNDER SEN *v.* GYANADA SUNDARI.

[23 Calc. 817

26.—Art. 179, cl. 4.—*Application for sanction to an agreement to give time to a judgment-debtor—Limitation Act, s.* 14—*Deduction of time of proceeding in Court without jurisdiction.*] On an application made in June, 1892, for execution of a decree, for the payment of a sum of money by instalments, passed in 1883 by a Subordinate Court, it appeared that the Subordinate Court, after executing it in part, had transferred it to the Presidency Court of Small Causes, which proceeded to execute it up to the 23rd February, 1887, and that, on a further application made on the 5th March, 1888, it was discovered that the transfer of the decree was a mistake, as the amount exceeded Rs. 2,000, and the decree was returned to the Subordinate Court on the 5th July, 1888. On the 26th February, 1889, an application was made to the Subordinate Court to sanction an agreement to give time for the satisfaction of the judgment-debt under Civil Procedure Code, s. 257A, but sanction was never given, and, on the 28th July, 1891, the decree-holder applied to have the decree transferred to another Court, and in September applied for execution and realised Rs. 250 towards the debt:—*Held*, by PARKER, J., that the time during which the decree was in the Presidency Court of Small Causes should be deducted in the computation of the period of limitation for the present application under Limitation Act, s. 14, cl. 3:—*Held*, by SHEPHARD and BEST, JJ., that whether or not such deduction should be made, the present application was barred by limitation for the reason that the application on the 26th February, 1889, was not a step in aid of execution. BARROW *v.* JAVERCHUND SETT.

[19 Mad. 67

27.—Art. 179, cl. 4.—*Application for substitution of the heirs of the deceased judgment-debtor—Application in accordance with law—Code of Civil Procedure* (1882), *ss.* 234, 235, 248 *and*

LIMITATION ACT (XV OF 1877)—*continued.*

(3) STEP IN AID OF EXECUTION—*concluded.*

273.] An application by the judgment-creditor for substitution of the heirs of the deceased judgment-debtor, though disallowed, is an application in accordance with law to take some step in aid of execution of the decree within the meaning of sub-section 4 of Art. 179 of the Limitation Act. An application by the judgment-creditor for the execution of his decree, which has been attached, as well as an application by him to execute another decree which he had attached in execution of his own decree, though disallowed, are applications in accordance with law. ADHAR CHANDRA DAS *v.* LAL MOHUN DAS.

[24 Calc. 778

28.—Art. 179, cl. 4.—*Application by decree-holder to be put in possession of property which he has purchased at a sale in execution of his decree.*] An application made by a decree-holder to be put into possession of property which he has purchased at an auction-sale held in execution of his decree is a "step in aid of execution" of that decree, and would afford the decree-holder a fresh starting-point for limitation. *Sujan Singh* v. *Hira Singh*, I. L. R. 12 All. 399, referred to. MOTI LAL *v.* MAKUND SINGH.

[19 All. 477

(4) ORDER FOR PAYMENT AT SPECIFIED DATES.

29.—Art. 179, cl. 6.—*Decree payable by instalments—Default in payment of first instalment—Right of waiver of default—Payment not certified to Court—Civil Procedure Code (Act VIII of 1859), s. 206 and (1882), s. 258.*] A decree dated 22nd Cheyt, 1295 (18th April, 1882), provided "that the defendants do pay the decretal money as per instalments given below, otherwise the plaintiff will have the power to cancel the instalments and realise the entire amount." The first instalment was made payable on 30th Cheyt, 1295 (26th April, 1888), and the other six instalments on the 30th of the months of Magh and Bysack in the three following years. In an application made on the 9th February, 1892, for execution of the decree, the decree-holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment-debtors denied having paid any of the instalments:—*Held*, that the clause in the decree to the effect that on non-payment of an instalment by the specified date, it should be in the power of the decree-holder to realize the full amount, was not intended to give him the option of waiving the default if he pleased, but that it implied nothing more than the usual condition that, on non-payment of an instalment, the whole decretal amount would become exigible; if, therefore, the first instalment had not been paid, the application for execution, not having been made within three years from the date when the whole amount became due, was barred by Art. 179 of Sch. II of the Limitation Act (*Chandra Kamal Dass* v. *Bissessurree Dassia*, 13 C. L. R. 243, dissented from), and the case was remainded for final decision of the question whether or not payment of the first instalment had been made. *Chenibash Shaha* v. *Sridam Mandal*, I. L. R. 5 Calc. 97; *Asmutullah Dalal* v. *Kally Churn Mitter*, I. L. R. 7 Calc. 56; *Nilmadhub Chuckerbutty* v. *Ramsodoy Ghose*, I. L. R. 9 Calc. 857; *Judistir Patro* v. *Nobin Chundra Khela*, I. L. R. 13 Calc. 73; *Ram Gulpo Bhattacharjee* v. *Ram Chunder Shome*, I. L. R. 14 Calc. 352; *Mon Mohun Roy* v. *Durga Churn Gooee*, I. L. R. 15 Calc. 502; and *Bir Narain Panda* v. *Darpa Narain Prodhan*, I. L. R. 20 Calc. 74, referred to. HURRI PERSHAD CHOWDHRY *v.* NASIB SINGH.

LIMITATION ACT (XV OF 1877)—*continued.*

(4) ORDER FOR PAYMENT AT SPECIFIED DATES—*continued.*

[21 Calc. 542

30.—Art. 179, cl. 6.—*Decree payable by instalments with proviso as to execution of entire decree on default in payment of instalments—Construction of decree.*] Where a decree for money is made payable by instalments with a proviso to the effect that on default being made in payment of the instalments, the decree-holder is entitled to execute the decree for the whole amount due, such a decree is to be construed as much as possible in favour of the decree-holder, and unless the decree clearly leaves the decree-holder no option on the happening of a default but to execute the decree once and for all for the whole amount due under it, the decree-holder may execute it on the happening of the first, second, or any subsequent default, and limitation will run against him in respect of each instalment separately from the time when such instalment may become due. SHANKAR PRASAD *v.* JALPA PRASAD.

[16 All. 371

31.—Art. 179, cl. 6.—*Application for execution of maintenance decree.*] On an application made in 1891 for the execution of a decree passed in 1870, it appeared that the decree directed the payment of maintenance to the plaintiff annually on a specified date, and the present application related to the period of three years from 1888 to 1891. There had been an application for execution in 1873. The next application was made in 1879, and it was dismissed as being barred by limitation:—*Held*, that the present application was not barred by limitation. KUPPU AMMAL *v.* SAMINATHA AYYAR.

[18 Mad. 482

32.—Art. 179, cl. 6.—*Decree payable by instalments—Waiver of default in payment—Civil Procedure Code* (1882), *s.* 258.] Where a decree was payable by instalments, and in default it was provided that the whole amount should become due:—*Held*, that proof of a part-payment towards an instalment due accepted by the decree-holder (even though it was a payment not certified to the Court under s. 258 of the Civil Procedure Code) would be material as evidence of waiver, and

LIMITATION ACT (XV OF 1877)—*continued.*

(4) ORDER FOR PAYMENT AT SPECIFIED DATES—*concluded.*

that if there were such waiver, limitation would not run till the next default. RAJESWARA RAU *v.* HARI BABANDHU.

[19 Mad. 162

33.—Art. 179, cl. 6.—*Transfer for Property Act (IV of 1882), s. 90—Application for decree against non-hypothecated property—Starting point of limitation.*] Where in a usufructuary mortgage it was covenanted that if the mortgagee was not given possession, he should have a right to obtain the sale of the mortgage property, the mortgage-debt meanwhile being payable on a certain specified date, it was *held* that in respect of an application under s. 90 of Act IV of 1882, the mortgaged property having been sold under the above-mentioned covenant and having proved insufficient to satisfy the debt, limitation began to run from the breach of the covenant to pay on due date, and not from the breach of the covenant to put the mortgagee in possession. SHEO CHARAN SINGH *v.* LALJI MAL.

[18 All. 371

——, Art. 180.

See ART. 122.

[24 Calc. 473

——, Art. 180.—*Application for execution of decree—Transfer of decree for execution—Revivor—Civil Procedure Code (1882) ss. 223, 230 and 248—Insolvent, Adverse possession of—Attachment.*] *A* obtained a decree against *B* on the original side of the High Court on the 19th December, 1881. On the 11th December, 1893, the judgment-creditor applied to the Court under s. 223 of the Code of Civil Procedure for "transmission of a certified copy of the decree to the District Judge's Court of the 24-Pergunnahs, with a certificate that no portion of the decree has been satisfied by execution within the jurisdiction" of the High Court, and alleging that the judgment-debtor had no property within its jurisdiction, but had property in the 24-Pergunnahs. The application was headed as an application for execution and was in a tabular form. Upon this, a notice was issued under s. 248 (*a*) of the Code, and, the judgment-debtor not having shown any cause, on the 19th December, 1893, a certified copy was ordered to be issued. The certified copy of the decree having been transmitted, the judgment-creditor, on the 1st March, 1894, applied for the execution of the decree to the District Judge. On the objection of the judgment-debtor that the execution was barred by limitation:—*Held* (NORRIS and GORDON, JJ.) that the application of the 11th December, 1893, was not an application for execution, and also that the order of the 19th December, 1893, was not an order for execution, and could not operate as a revivor of the decree within meaning of Art. 180, Sch. II of the Limitation Act. There was no necessity for the issue of a notice under s. 248 upon the application to transfer the decree under s. 223 of the Code, and on that application execution could not have been obtained upon the order of the 19th December, 1893. The first application for execution was that made on the 1st March, 1894, to the Court to which the certified copy of the decree was transmitted, and that was not within time. The execution of the decree was therefore barred by limitation. *Nilmony Singh Deo* v. *Biressur Banerjee*, I. L. R. 16 Calc. 744, followed; *Ashootosh Dutt* v. *Doorga Churn Chatterjee*, I. L. R. 6 Calc. 504, distinguished. SUJA HOSSEIN *alias* REHAMUT DOWLAH *v.* MONOHUR DAS.

[22 Calc. 921

A review having been granted of this decision, the appeal was re-heard, and on the objections of the judgment-debtor that the execution was barred by limitation, and that he having been declared an insolvent, and the properties having vested in the Official Assignee, the attachment was contrary to law:—*Held* (O'KINEALY and HILL, JJ.), that the execution was not barred by limitation, as the order of the 19th December, 1893, was an order for execution, and operated as a revivor of the decree within the meaning of Art. 180, Sch. II of the Limitation Act:—*Held*, also, that the judgment-debtor having been in possession of the property for more than twelve years, the Official Assignee not having taken possession of it, he had a title by adverse possession which was capable of being attached. *Ashootosh Dutt* v. *Doorga Churn Chatterjee*, I. L. R. 6 Calc. 504; *Futteh Narain Chowdhry* v. *Chandrabati Chowdhrain*, I. L. R 30 Calc. 551, followed. SUJA HOSSEIN *alias* REHAMUT DOWLAH *v.* MONOHUR DAS.

[24 Calc. 244

LIQUIDATOR.

See COMPANY — WINDING UP — DUTIES AND POWERS OF LIQUIDATORS.

[18 Mad. 498

[20 Bom. 654

——, Inquiry into conduct of.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[19 Bom. 88

——, Remedies of.

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.

[21 Bom. 273

——, Suit by.

See LIMITATION ACT, S. 22.

[18 All. 198

See PLAINT—AMENDMENT OF PLAINT.

[17 All. 292

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.

[17 All. 292

[18 All. 198

LIST OF VOTERS AT ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[22 Calc. 717

LIS PENDENS.

See FOREIGN COURT, JUDGMENT OF.

[19 Mad. 257

1.—*Mortgage executed during pendency of maintenance suit in which decree in made charging property mortgaged—Transfer of Property Act (IV of 1882). s. 52.*] Where a member of a Hindu family, during the pendency of a suit for maintenance which resulted in a decree charging the house in suit together with other property with the maintenance claimed, mortgaged the house in suit to the plaintiff:—*Held*, that he was entitled so to do, and that the validity of the mortgage was not affected by the doctrine of *lis pendens*. MANIKA GRAMANI *v.* ELLAPPA CHETTI.

[19 Mad. 271

2.—*Purchaser at sale in execution of decree—Attachment of property sold, ante litem.*] Where the defendant in an ejectment action had brought the village in question at a sale in execution of a decree obtained by the mortgagee against the mortgagors thereof, it appeared that prior to his purchase the plaintiff's vendor had sued to establish against the parties to that decree his title to the village, and had subsequently obtained a decree in his favour:—*Held*, that the defendant bought *pendente lite*, and was bound by the decree so obtained. That result could not be avoided by showing that the mortgagee decree-holder had attached the village prior to the suit by the plaintiff's vendor. MOTI LAL *v* KARAB-UL-DIN.

[L. R. 24 I. A. 170
[25 Calc. 179

LOCAL BOARD, PRESIDENT OF, NOTICE BY.

See PENAL CODE, S. 188.

[20 Mad. 1

LOCAL GOVERNMENT, RULES MADE BY.

See PORTS ACTS, S. 6.

[17 Mad. 118, 397

LOCAL INVESTIGATION.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[19 All. 302

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATION.

[21 Calc. 504

See TRANSFER OF CRIMINAL CASE.

[21 Calc. 920
[19 All. 302

LOCAL INVESTIGATION—*concluded.*

1.—*Powers of Magistrates in holding local investigation—Collection of evidence by Magistrate on local inquiry—Evidence.*] Power of Magistrates to hold local investigations and the nature of such investigations discussed. Whenever it is desirable for a Magistrate to view the place at which an occurrence, the subject-matter of a judicial investigation before him, has taken place, he should be careful to confine himself to such a view of the place as to enable him to understand the evidence placed before him, and should take care that no information reaches him with reference to the occurrence which he has to investigate beyond what he acquires by that view, and if the place of the occurrence be in dispute he would be wise in postponing his visit till all the evidence has been recorded, if under such circumstance he feels disposed to visit it at all. But where a local inquiry by a Magistrate takes the form of an investigation into the occurrence on the site of the occurrence instead of in his own Court, and he takes evidence on the spot, such evidence should not be recorded unless it is protected by all the safeguards by which evidence on which a Judge may act is protected by law. HARI KISHORE MITRA *v.* ABDUL BAKI MIAH.

[21 Calc. 920

2.—*Court proceeding to hear an appeal without waiting for return to a commission for local investigation issued at the request of a party—Civil Procedure Code s. 584—Substantial error in Procedure.*] The intention of the Code of Civil Procedure is that when a Court deems it necessary, on the application of a party or otherwise, that a commission for local investigation should be issued, the return to that commission should be before the Court before it proceeds to hear and determine the case. MADHO SINGH *v* KASHI SINGH.

[16 All. 342

LOTTERY.

See COMPANY—FORMATION AND REGISTRATION.

[20 Mad. 68

LUNATIC.

——, Committee of, under Act XXXV of 1858.

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

[22 Calc. 864

——, Suit against.

See OUDE LAND REVENUE ACT, SS. 175 AND 176.

[22 Calc. 729

1.—*Act XXXIV of 1858—Inquiry into alleged lunacy—Degree of unsoundness of mind—Manager of lunatic, Duty of.*] A Hindu, who had acquired considerable assets without any ancestral property, lived with one of his wives and his eldest

LUNATIC—*continued.*

son who managed the property. A younger son, who lived apart with his mother, made an application to the High Court alleging that his father was a lunatic, and praying that he be declared to be so, and that a committee be appointed under Act XXXIV of 1858, and that the eldest son be directed to deliver the property to the committee. It was found on the inquiry held under the above Act, that the alleged lunatic had for many years now and then been for short periods in such a state of mind as to render it right to detain him at home, and that he now had about him that which when aroused by the recollection of past losses or by the recurrence of family quarrels might produce mental derangement, but that he was of sound mind at the dates of the above application and of the inquiry:—*Held*, that the application should be dismissed. *Per curiam:* The eldest son should give to those who would be co-heirs with him to his father a fair opportunity of satisfying themselves that his management is open to no question, and that nothing is done to their detriment. Distinction between lunacy with lucid intervals, and a state of sound mind, subject to occasional unsoundness arising from accidental and temporary causes, considered. IN RE NAGAPPA CHETTI.

[18 Mad. 472

2.—*Act XXXV of* 1858, *ss.* 10, 18 *and* 22—*Residence—Lunatic resident in mofussil—Guardian of lunatic's person—Position of guardian towards local Court appointing him—Temporary suspension of guardian—Jurisdiction of District Judge—Irregularity—Superintendence of High Court—Civil Procedure Code* (1882), *s.* 622.] Although Act XXXV of 1858 contains no express provisions as to the place of residence of a lunatic governed by the Act, it contemplates that he shall reside within the jurisdiction of the Court that has found him to be a lunatic. The guardian of such a lunatic's person is, in matters connected with the guardianship, subordinate to the District Court which appointed him. A guardian, having obtained leave from the District Judge to take the lunatic out of the jurisdiction for a specified time, was, at the expiration of that time, ordered to return with the lunatic to his residence within the local jurisdiction. He failed to comply with the order. Without further notice, the District Judge by certain orders which he gave, by letter and telegram, through the manager of the lunatic's estate, suspended the guardian from his office, and directed him to make over the custody of the lunatic to the manager. The guardian made over the custody accordingly, and then applied to the High Court, under s. 622 of the Code of Civil Procedure, to set aside those orders and restore the custody of the lunatic to him at Calcutta, (outside the jurisdiction of the Court to which the lunatic was subject). The High Court declined to interfere, even though the orders were made irregularly; because no case for its intervention had been made out, and because the lunatic ought not to be removed out of the local jurisdiction. IN THE MATTER OF BASHARAT ALI CHOWDHRY.

[24 Calc. 133

LUNATIC—*continued.*

3.—*Striking out lunatic plaintiff's name—Authority of pleader as agent for filing suit—Limitation Act* (*XV of* 1877), *s.* 7—*Restoration of name—Suit by person not adjudged to be of unsound mind under Act XXXV of* 1858—*Right of suit—Guardian—Next friend.*] A plaint as originally framed contained the name of *K*, stated to be of unsound mind, as first plaintiff, and of his wife *N* as his guardian and second plaintiff. When the plaint was actually filed, *K's* name was struck out by the pleader and *N*. Subsequently his name was restored on his own application, but the period of limitation prescribed for the suit had then elapsed. The first Court held that under s. 7 of the Limitation Act the plaintiff's claim was not barred. On appeal, the Judge dismissed the suit, holding that the order of the first Court restoring *K's* name was bad, and that the suit was time-barred at the date of that order. On second appeal, *held*, reversing the decree, that the pleader and *N* acted beyond their authority in striking out *K's* name, and that therefore the restoration of his name must relate back to the filing of the suit, which was, therefore, not barred. *Quære*: Whether a person of unsound mind, but not adjudged to be so under Act XXXV of 1858, can in this country sue by his next friend. KIRPARAM JHUMEKRAM MODIA *v.* MODIA DAYALJI JHUMEKRAM.

[19 Bom. 135

4.—*Act XXXV of* 1858, *s.* 13—*Married daughter of lunatic—Maintenance,—"Family," Meaning of.*] The word "family" in s. 13 of Act XXXV of 1858 (which provides for the maintenance of the lunatic and his family) does not include a married daughter of the lunatic living with her husband apart from her father, but includes only persons living with the lunatic as members of his family, and dependent on him for their maintenance. CHUNDRABATI KOERI *v.* MONJI LAL.

[23 Calc. 512

5.—*Act XXXV of* 1858, *s.* 14—*Manager appointed under the Lunacy Act—Manager of joint family—Alienation by manager.*] Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in accordance with the provisions of that Act, although he may also be *de facto* manager of the family property. A Hindu married woman having a lunatic husband and minor sons was appointed guardian of the lunatic's estate under Act XXXV of 1858. She was also *de facto* manager of the family. She mortgaged the family property, without the sanction of the Court as required by s. 14 of the Act:—*Held*, that the mortgages were invalid as regards the lunatic's interest in the property; but, as regards the interest of the minors, which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes. ANPURNABAI *v.* DURGAPA MAHALAPA NAIK.

[20 Bom. 150

6.—*Act XXXV of* 1858, *ss.* 15, 16, 17, 18 *and* 20—*Hindu lunatic member of joint family—Joint*

LUNATIC—*concluded.*

member of the lunatic's family appointed guardian or manager of the lunatic's estate—Liability to account—Manager charged with mismanagement.] The manager of a Hindu lunatic's estate appointed under Act XXXV of 1858, who is in possession with others of joint family property, is not, in his capacity of manager of the lunatic's estate, bound by the provisions of s. 15 of the Act to exhibit an inventory and account of the family property. The lunatic is possessed of no property for which the manager is liable to account. It does not make any difference if the manager is himself a joint owner or not. The Act provides no machinery, nor does it confer any power upon the Court, to deal with the joint family property or interfere in the affairs of a joint family. If a manager is charged with mismanagement he is entitled to some particulars of the charges made against him In all cases of lunacy in which a guardian or a manager of the lunatic's estate is appointed by the Court under the Act, it is desirable to issue a formal order or certificate of appointment. TRIMBAKLAL GOVANDAS *v.* HIRALAL ITCHHALAL.

[20 Bom. 659

MADRAS ABKARI ACT (MADRAS ACT I OF 1886).

——, ss. 31 and 36.

See PRIVATE DEFENCE, RIGHT OF.

[19 Mad. 349

——, s. 43.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ABKARI ACT.

[18 Mad. 48

MADRAS ACT.

——, 1864—II.

See MADRAS REVENUE RECOVERY ACT.

——, 1865—VII.

See MADRAS IRRIGATION CESS ACT.

——, 1865—VIII.

See MADRAS RENT RECOVERY ACT.

——, 1873—III.

See MADRAS CIVIL COURTS ACT.

——, 1876—I.

See MADRAS LAND REVENUE ASSESSMENT ACT.

——, 1882—V.

See MADRAS FOREST ACT.

——, 1884—II.

See MADRAS BOUNDARY MARKS AMENDMENT ACT.

MADRAS ACT—*concluded.*

——, 1884—III.

See MADRAS REVENUE RECOVERY AMENDMENT ACT.

——, 1884—IV.

See MADRAS DISTRICT MUNICIPALITIES ACT.

——, 1884—V.

See MADRAS LOCAL BOARDS ACT.

——, 1886—II.

See MADRAS HARBOUR TRUST ACT.

——, 1887—I.

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENT ACT.

——, 1888—III.

See MADRAS POLICE ACT, 1888.

——, 1889—I.

See MADRAS VILLAGE COURTS ACT.

——, 1889—III.

See MADRAS TOWNS NUISANCES ACT.

MADRAS BOUNDARY MARKS ACT (XXVIII OF 1860).

——, s. 25.

See LIMITATION—QUESTION OF LIMITATION.

[19 Mad. 416

MADRAS BOUNDARY MARKS ACT AMENDMENT ACT (MADRAS ACT II OF 1884).

——, s. 9.

See LIMITATION — QUESTION OF LIMITATION.

[19 Mad. 416

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873).

——s. 12.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &c.

[17 Mad. 309

See MUNSIF, JURISDICTION OF.

[19 Mad. 56

——, s. 28.

See MUNSIF, JURISDICTION OF.

[19 Mad. 445

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884).

——, **s. 47 and s. 63.**—*Land tax—Land unappropriated to buildings.*] A municipal council under the Madras District Municipalities Act has no power to levy a tax on any land exceeding seven-and-a-half per cent. on the annual value of such land. The meaning of the term "lands unappropriated to any buildings" in the Madras District Municipalities Act, s. 63. cl. 2, considered. CLARKE *v.* CHAIRMAN, OOTACAMUND MUNICIPAL COUNCIL.

[18 Mad. 310

1.—s. 53 and Sch. (A).—*Profession tax—District Court pleader—Court situated outside municipal limits.*] The plaintiff, who was a pleader, lived and had his office and occasionally practised in Courts within the limits of the Municipality of Salem, but he claimed to be entitled to the refund of a sum levied on him for profession tax under the District Municipalities Act for the reasons that he practised as a District Court pleader, and that the District Court was situated outside the municipal limits:—*Held*, that the plaintiff was liable to pay profession tax to the Municipality of Salem. RAMASAMI AYYAR *v.* MUNICIPAL COUNCIL OF SALEM.

[18 Mad. 183

2.—ss. 53, 59 and 60.—*Profession tax—Trader.*] One who makes it his business to sell the produce of his own land for profit is a trader within the meaning of Madras Act IV of 1884, provided the sales are conducted in a shop or place of business:—*Held*, by PARKER, J., that one who has paid profession tax as a sheristadar in one municipality is not on that account exempted from paying a futher tax in respect of a trade carried on by him in another municipality under Madras Act IV of 1884. VENKATA REDDI *v.* TAYLOR.

[17 Mad. 100

——, **s. 55.**—*Profession tax—Officer with headquarters in municipality.*] An officer, whose head-quarters are within a municipality, does not *ipso facto* exercise his profession or hold such office or appointment within the municipality so as to render himself liable for the payment of profession tax under Madras Act IV of 1884. Accordingly an officer who is not personally present at his head-quarters in the course of duty for a period of sixty days in the half-year is not liable for the tax under s. 55 of the Act. CHAIRMAN, ONGOLE MUNICIPALITY *v.* MOUNSEY.

[17 Mad. 453

——, **s. 63.**

See s. 47.

[18 Mad. 310

——, **s. 179.**—*Repair of buildings.*] By s. 179, Madras District Municipalities Act IV of 1884, it is provided that "the external roofs, verandahs, *pandals*, and walls of buildings erected or renewed after the coming into operation of this Act shall not be made of grass, leaves, mats or other such inflammable materials except with the written permission of the Municipal Council":—*Held*, that the word "renewed" includes repairing. QUEEN-EMPRESS *v.* SUBBANNA.

[19 Mad. 241

——, **s. 262.**—*Suit to recover tax alleged to be illegally levied—Right of suit.*] The plaintiff built a house at Nellore, the construction of which was completed on the 15th of August, 1893. The municipal authorities of that place, being governed by the Madras District Municipalities Act, gave notice of assessment on the 11th of September, levied the tax as assessed, and credited it as the tax due for the half-year ending on the 30th of September, 1893. The plaintiff now sued to recover the amount paid by him as having been illegally levied:—*Held* that, under the provisions of the District Municipalities Act, s. 262, the suit was not maintainable. MUNICIPAL COUNCIL OF NELLORE *v.* RANGAYYA.

[19 Mad. 10

MADRAS FOREST ACT (MADRAS ACT V OF 1882).

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.

[19 Mad. 165

——, **s. 4, and ss. 2, 10 and 14.**—*Claim to percentage of forest income—Pensions Act (XXIII of 1871), s 4—"Civil Court"—Jurisdiction of Forest Settlement Officer—Jurisdiction of Appellate Court—Consent of parties to jurisdiction.*] A claim to a percentage of forest income is not a claim to forest produce under Madras Act V of 1882, nor is it a claim to a right specified in s. 4 of that Act. A Forest Settlement Officer has no jurisdiction to entertain a suit in which such a claim is made, and such a suit brought by discharged forest *karnams* is barred by s. 4 of the Pensions Act. A Forest Settlement Officer is a "Civil Court" for the purposes of the Pensions Act. If a Court of limited jurisdiction exceeds its powers and adjudicates on a claim over which it has no jurisdiction, the Court (if any) which exercises appellate jurisdiction over it is bound to entertain an appeal preferred against the lower Court's decision, and to correct the error. A Court of competent appellate jurisdiction in such a case is not bound by an order made without jurisdiction by a Collector on an appeal to him in the same suit. Submission by the parties to his jurisdiction cannot give a Forest Settlement Officer jurisdiction in a case where he has no inherent jurisdiction. SECRETARY OF STATE FOR INDIA *v.* VYDIA PILLAI.

[17 Mad. 193

——, **ss. 10 and 11.**—*Claim by riparian owner to uninterrupted flow of natural stream—Jurisdiction of Forest Settlement Officer.*] A Forest Settlement Officer appointed under s. 4 of the

MADRAS FOREST ACT (MADRAS ACT V OF 1882)—*concluded.*

Madras Forest Act, 1882, has, under ss. 10 and 11 of that Act, jurisdiction to decide a claim by a riparian owner to the uninterrupted flow of the water of a natural stream. SANGILI VEERA PANDIA CHINNA TAMBIAR *v.* SUNDARAM AYYAR.

[20 Mad. 279

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886).

See BILL OF LADING.

[19 Mad. 169

MADRAS IRRIGATION CESS ACT (MADRAS ACT VII OF 1865).

—*Lands irrigated under Kistna anicut—Water-cess—Optional or compulsory use of water.*] A ryot occupying land in the Kistna delta made no application for the supply of water, but water from the irrigation channels flowed from time to time on to his land from irrigated lands of a higher level, and he had no option as to whether to accept or refuse the supply. No increased benefit was derived from the water by the ryot. A sum having been levied from him on account of water-cess, he now sued to recover the amount:—*Held*, that the plaintiff was entitled to recover. *Venkatappyya* v. *Collector of Kistna*, I. L. R. 12 Mad. 407, followed. KRISHNAYYA *v.* SECRETARY OF STATE FOR INDIA.

[19 Mad. 24

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876).

1.—S. 2.—*Separate registration and assessment of revenue—Suit for declaratory decree—Consequential relief—Specific Relief Act, s.* 42—*Misjoinder of parties—Madras Regulation* (*XXV of* 1802), *s.* 8—*Want of concurrence of parties in applying.*] A suit was brought by *F* against the Secretary of State for India in Council for a declaration that the order of the Madras Government directing the Collector to cancel the separate registration and assessment of a village in the Sivaganga zemindari in his name was *ultra vires* and illegal. The plaintiff's claim to be separately registered as the holder of the said village depended upon the proper construction to be put on a grant of the village contained in two documents, the one dated the 13th December, 1872, and the other being a document, dated the 14th May, 1877, executed by the Rani and her children. Subsequently to the grant referred to, an application was preferred by the Rani and addressed to the Collector requesting him to separately assess the village and register it in the name of *F*. This application was never presented owing to the death of the Rani, who was succeeded by the father of the present zemindar who executed, on the 22nd February, 1883, a deed of release in favour of *F* ratifying the grant abovementioned in the following terms. "Whereas the village of Kondagai

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876)—*continued.*

. . . . of my zemindari . . . . has been granted to you in perpetuity by the late Rani Kattama Nachiyar and others, and has been in your possession according to the terms of the documents executed by them to you therefor on the 13th December, 1872, and on the 14th May, 1877, and whereas I have received from you Rs. 2,000 as the consideration for my ratifying your rights in accordance with the terms of the said documents and for relinquishing whatever rights I possess therein, I hereby ratify your rights of every description in the said village and relinquish all my rights therein in your favour. Wherefore as per the terms of the said documents, dated the 13th December 1872, and the 14th May, 1877, you and your heirs and assigns shall hold and enjoy the said Kondagai village . . . . in perpetuity . . . . with full powers of alienation by sale, gift or otherwise. You shall pay to my zemindari the sum of Rs. 3,500, the *peruppu* fixed on the said village, as well as road-cess, *magamai*, *&c.*, according to custom," and he applied to the Collector for separate assessment and registration of the village in the name of *F* on the 25th March, 1883. On the 29th March, 1883, *F* also made a similar application, but, pending disposal, the present zemindar's father died, and was succeeded by his son the present zemindar, who raised objections, and the application was not granted. On the 23rd May, 1887, the present zemindar granted a lease of the zemindari to *O*, *S*, and *K*, who executed a release guaranteeing *F* undisturbed possession and enjoyment of the village, and accepted his position such as it may have been at or prior to the date of the execution of the lease. On the 23rd January, 1890, the zemindar executed in favour of *F* a deed of release which after reciting the grant from the Rani, the deed executed by the zemindar's deceased father, dated the 22nd February, 1883, and a further payment of Rs. 3,500 by *F*, contained the following covenant: "Therefore I forfeit and relinquish the right I profess to have in me to question the said permanent lease or the terms of the said lease deeds, and I hereby ratify your right. You and your heirs shall hold and enjoy the said villages absolutely according to the terms of the aforesaid permanent lease deeds." *F* then applied by petition, dated the 13th March, 1890, to the Collector for separate registration and assessment of the said village, but on notices being sent to the zemindar and the lessees, they filed objections which after due inquiry were overruled by the Collector, who ordered separate registration and fixed the assessment. On appeal, the Board of Revenue supported the action of the Collector. Whereupon the lessees appealed to the Government of Madras on the 21st September, 1891, and the Government of Madras on the 14th November, 1891, cancelled both the separate registration and the separate assessment. Under the circumstances *F* claiming to be the duly registered holder of the said village sued the Secretary of State for a declaration that the order of the Madras Government, dated

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876)—*concluded.*

the 14th November, 1891, directing the Collector to cancel the separate registration and assessment of the said village was *ultra vires* and illegal—and the lessees sued *F* for the balance of *poruppu*, *magamai*, and road-cess, with interest alleged to be due on the said village for fasli 1300:—*Held*, that *F* was bound to pay the lessees Rs. 3,500 *poruppu* with *magamai* and road-cess whether his village was separately registered and assessed or not:—*Held*, that the suit by *F*, for a declaration that the order of the Madras Government directing the Collector to cancel the separate registration and assessment of the village previously made by him was illegal and *ultra vires*, could not be maintained with reference to s. 42, Specific Relief Act, inasmuch as the order had been already carried out:—*Held*, also, that if the general words of the prayer "for such other relief as the circumstances of the case may require" were to be taken as including a prayer for consequential relief, then the suit was bad for misjoinder, inasmuch as the zemindar and the lessees who were interested parties were not joined:—*Held*, also, that not only the person applying under Act I of 1876, s. 2, for separate assessment and registration must be entitled thereto, but also that the parties to the alienation must concur in the application. FISCHER *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL; ORR *v.* FISCHER.

[19 Mad. 292

2.—ss. 2 and 6.—*Suit for declaration of right to separate registration and assessment—Madras Regulation (XXV of 1802), s. 8—Want of concurrence of parties in suit.*] An alienee of a portion of a zemindari is entitled to separate registration and assessment under Madras Act I of 1876. A Court has power to order separate registration and assessment under s. 6, although all the parties concerned do not concur in applying within the meaning of s. 2. KAMALAMMAL *v.* RAJU NAICKER.

[19 Mad. 308

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884).

——, s. 87, cl. 3. — *Government stores and equipages—Non-liability to tolls.*] Stores and carts belonging to the Government jails come within the words "Government stores and equipages" in cl. 3, s. 87, Act V of 1884, and are free from tolls under that Act. QUEEN-EMPRESS *v.* KUTTI ALI.

[20 Mad. 16

——, ss. 98 and 100.

See PENAL CODE, S. 188.

[20 Mad. 1

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884).

——, s. 433.—*Notice of action.*] In a suit against the President of the Municipal Commission, Madras, to recover damages for the demolition of a house which had been built by the plaintiff without previous notice given by him under the Madras Municipal Act, 1884, s. 265, the plaintiff proved, by way of notice of action, the delivery of a letter signed by him and dated from his place of residence, which did not state where the house in question had stood, nor the date of its demolition, nor state positively that an action would be brought:—*Held*, that the letter was not a sufficient notice of action. DEVALJI RAU *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS.

[18 Mad. 503

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884)—*concluded.*

——, Sch. B.—*Vehicle tax—Bicycle—Vehicle with springs.*] A bicyle with pneumatic tires, having two metal springs under the saddle, is liable to taxation as a vehicle with springs under the City of Madras Municipal Act, 1884. WILSON *v.* MADRAS MUNICIPALITY.

[19 Mad. 83

MADRAS POLICE ACT (XXIV OF 1859).

——, ss. 10 and 44.—*Departmental punishment and prosecution under the Act.*] In the absence of any rules framed by Government under s. 10 of the Madras Police Act, a departmental punishment inflicted under that section is no bar to a prosecution under s. 44 of that Act. QUEEN-EMPRESS *v.* FAKRUDEEN.

[17 Mad. 278

——, ss. 21 and 49.—*Procession likely to cause breach of the peace—Powers of Police—Removal of banners from persons in the procession—Trespass.*] A procession of Hindus carried certain banners, and the Superintendent of Police was of opinion that a breach of the peace would be occasioned if these banners continued to be displayed, and in good faith, for the purpose of preventing such breach of the peace, he took away the banners from certain persons in the procession:—*Held*, that the action of the Superintendent of Police was not justified by the Madras Police Act, 1859, ss. 21 and 49, and that he was accordingly liable for the trespass. RANGANAYAKULU *v.* PRENDERGAST.

[17 Mad. 37

MADRAS POLICE ACT (MADRAS ACT III OF 1888).

——, ss. 42, 45 and 47.—*Seizure of articles used for purpose of gaming.*] In the Madras City Police Act III of 1888, s. 47, the words "all or any of the other articles seized" include money or securities for money seized by the Police under s. 42. The Magistrate is not bound to hold any inquiry as to whether the money and other things seized were used or intended to be used for the purpose of gaming. QUEEN-EMPRESS *v.* BHASHYAM CHETTI.

[19 Mad. 209

MADRAS REGULATION.

——, 1802—XXV, s. 8.

See KARNAM.

[20 Mad. 145

See MADRAS LAND REVENUE ASSESSMENT ACT.

[19 Mad. 292, 308

——, s. 11.

See KARNAM.

[20 Mad. 145

——, 1802—XXVI.

See POSSESSION—ADVERSE POSSESSION.

[20 Mad. 6

——, 1802—XXIX, s. 5.

See KARNAM.

[20 Mad. 145

——, s. 7.—*Zemindari karnam—Order of succession to hereditary office—Hindu law, Inheritance.*] A woman, who had been appointed to succeed her husband, the holder of the hereditary office of *karnam* in a zemindari, died leaving the defendant, her daughter's son, and the plaintiff, the son of her late husband's paternal uncle:—*Held*, that the defendant was entitled to succeed in preference to the plaintiff. The "heirs of the preceding *karnam*" in s. 7 of Madras Regulation XXIX of 1802 mean his next of kin according to the order of succession of the several grades of legal heirs, and not heirs in the order of succession to undivided divisible ancestral property. *Krishnamma* v. *Papa*, 4 Mad. 234, followed. SEETARAMAYYA *v.* VENKATARAZU.

[18 Mad. 420

——, 1804—V, s. 17.

See COLLECTOR.

[19 Mad. 255

See CONTRACT ACT, s. 25.

[19 Mad. 255

——, 1816—XI, s. 5.

See ESCAPE FROM CUSTODY.

[17 Mad. 103

——, 1817—VII.

See ACT XX OF 1863.

[17 Mad. 95, 212

——, 1831—VI, s. 3.

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

[17 Mad. 302

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865).

See POSSESSION—ADVERSE POSSESSION.

[20 Mad. 6

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*contd.*

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[17 Mad. 106

——, s. 7.

See LIMITATION ACT, ART. 12.

[20 Mad. 33

——, s. 9.

See s. 11.

[18 Mad. 216

See JURISDICTION OF REVENUE COURT.

[17 Mad. 140

——, s. 10.

See JURISDICTION OF CIVIL COURT—POTTAHS.

[17 Mad. 1

See JURISDICTION OF REVENUE COURT.

[17 Mad. 140

See LIMITATION ACT, ART. 110.

[17 Mad. 225

[19 Mad. 21

1.—s. 11.—*Enhanced rent on irrigated land—Sanction by Collector of enhanced rent—Customary contribution to a temple—Implied contract—Landlord and tenant.*] A zemindar tendered to ryots on his estate *pottahs* providing (*inter alia*) for the payment of (1) certain fees to a Hindu temple, (2) rent in which the land assessment was consolidated with a water-cess in respect of certain land irrigated under the Kistna anicut. There was nothing to show that the former of these items constituted a charge on the land, and the latter had not been sanctioned by the Collector under the Madras Rent Recovery Act, s. 11, but it was found that both had been paid by the ryots for many years. The Court of first appeal held on this finding that there were implied contracts on the part of the ryots to pay both items:—*Held* (1) that the temple fee was *primâ facie* voluntary, and should not be treated as a payment which the zemindar could compel a ryot to make, and consequently that the *pottah* tendered to him was an improper *pottah*; (2) that the finding as to the existence of an implied contract to pay the second of the above items was a correct finding, in accordance with the ruling in *Venkatagopal* v. *Rangappa*, I. L. R. 7 Mad. 365. The first proviso to the Madras Rent Recovery Act, s. 11, is not restricted in its application to rates of original rent as contradistinguished from its enhancement on account of improvements. SIRIPARAPU RAMANNA *v.* MALLIKARJUNA PRASADA NAYUDU.

[17 Mad. 43

2.—s. 11.—*Enhanced rent on irrigated land—Sanction by Collector of enhanced rates of rent—Implied contract to pay rent at a certain rate—Landlord and tenant.*] In a suit brought by the Collector of a district, as receiver of a zemindari,

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*contd.*

against a tenant on the estate to enforce the exchange of *pottah* and *muchalka*, it appeared that the rent demanded was assessed at an enhanced rate, and comprised a consolidated wet rate imposed on account of irrigation. To the enhancement of the rent by the addition of the water rate the sanction of the Collector required by the Madras Rent Recovery Act, s. 11, first proviso, had not been obtained:—*Held*, that such sanction could not be implied from the fact that the Collector, as such receiver, had caused the provision in question to be inserted in the *pottah*, and now sought to enforce it by suit. Upon the question whether, from the fact that the tenant had paid the water rate in question for some years previously, an implied contract to pay it for the future could be inferred:—*Held*, upon the facts of the present case, that no such contract could be inferred. With reference to the Full Bench decision in *Venkatagopal* v. *Rangappa*, I. L. R. 7 Mad. 365, the Court stated what was the principle to be kept in view in considering whether an implied contract to pay enhanced rent could be inferred. MALLIKARJUNA PRASADA NAYUDU *v.* LAKSHMINARAYANA.

[17 Mad. 50

3.—s. 11.—*Enhanced rent on irrigated land—Sanction granted by Head Assistant Collector—Customary rent—Implied contract—Restraint on building—Landlord and tenant.*] A Head Assistant Collector is competent to grant a sanction for the enhancement of rent under the Madras Rent Recovery Act, s 11. The granting of such sanction is a judicial and not a merely administrative act, and such sanction should not be granted without first giving notice to both the landlord and the tenant, and hearing and considering the contentions of both parties. In a suit by the landlord to enforce the exchange of a *pottah* and *muchalka*, the tenant objected to the rate of rent imposed on part of the land, which was dry land converted into wet:—*Held*, that the finding of the lower Appellate Court that there was an implied contract to pay rent at such rate was not open to any legal objection. It appeared that the *pottah* tendered contained a stipulation for the payment of rent at a special rate for garden (*jarib*) lands watered by wells which had been constructed by the ryot at his own cost, and also comprised a stipulation that the ryot should not build on his holding. The Court of first appeal *held* that the special rate of rent above referred to was customary, and had been followed for many years:—*Held*, that there was no ground for interference on second appeal with the lower Appellate Court's decision regarding the former of the stipulations above referred to, but that the latter should be so modified as to prevent the ryot only from raising any building incompatible with an agricultural holding. BHUPATHI *v.* RANGAYYA APPA RAU.

[17 Mad. 54

4.—s. 11.—*Implied contract as to rates of rent—Customary fees—Restraint on building—Landlord and tenant.*] In order to support the inference of a contract under the Madras Rent Recovery Act, s. 11, from payment of the same rent for a given number of years, the intention that the same rent is payable in future years must be clear and unequivocal: it is unsafe to imply such a contract from a single lease for five years. A *pottah* is not unenforceable by reason of its providing for the payment of fees to village artisans in a case where such fees are customary, or by reason of its prohibiting the tenant from erecting buildings on his holding, if such prohibition is limited to erections not compatible with the agricultural character of the holding. LAKSHMANA *v* APPA RAU.

[17 Mad. 73

5.—s. 11 and s. 9.—*Condition of pottah—Established rates of rent—Rent in kind.*] The zemindar of Vallur sued certain ryots in his *pergunnah* of Gudur to enforce the acceptance of *pottahs* providing, among other conditions, that the ryots should relinquish their holdings at the end of the term unless fresh *pottahs* were tendered to them, that they should pay half the cost of repairs by a cess proportioned to the wet rate, that if they irrigated dry land they should pay a wet rate to the zemindar, as well as the water rate due to Government, that they should not cut crops without permission, and should supply grass and vegetables to the zemindar's servants. It appeared that in 1853 the *pergunnah* in question was surrendered to Government who restored it subject to the payment of a newly-assessed *peishcush* in 1862, a date when the present defendants were already in occupation of their respective holdings. In the interval, Government collected village rents in money. The *pergunnah* was not surveyed, and a money assessment fixed prior to 1859. The District Judge expunged the conditions in the *pottah* above referred to, and held that the zemindar was entitled to collect, by way of rent from the ryots respectively, the quota of the village rents which each ryot paid in 1861. He found, however, that there was no contract express or implied as to the rent to be paid; and that prior to 1851 the ryots held their lands under the zemindar on the sharing system, and that for the first year after the restoration of the *pergunnah* the arrangement enforced by Government had remained in force, but that from 1863 to 1870 the sharing system was in force, and *varam* was paid by the ryots, after which for five years individual money rents were collected, and then there were two leases with money rents each for a period of five years:—*Held* (1) that the conditions in the *pottah* above referred to were unenforceable and had been rightly expunged; (2) that the plaintiff's rights were not limited by the rates of rent paid to Government in 1861, but that the rent should be discharged in kind according to the established rate of *varam* in the village; (3) that the plaintiff was entitled to recover from the ryots half the water-tax payable on the *poramboke* lands irri-

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*contd.*

gated from the Kistna anicut. VENKATA NARASIMHA NAIDU *v.* RAMASAMI.

[18 Mad. 216

——s. 18.

See s. 69.

[20 Mad. 476

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[20 Mad. 498

——, s. 19.

—Issue of pottah, Effect of—Receipt of rent—Suit for possession—Ejectment.] On the true construction of s. 12 of the Madras Rent Recovery Act (Madras Act VIII of 1865) the issue of a *pottah* is not intended to do more than prevent the arbitary ejectment of tenants, and does not give them a right of permanent occupancy; and it did not therefore prevent a plaintiff, though he had issued *pottahs* to the defendant, from recovering the lands from him, and he was not bound merely to receive rent. SATHIANAMA BHARATI *v.* SARAVANABAGI AMMAL.

[18 Mad. 266

——, ss. 38 and 39.

See LIMITATION ACT, ART. 12.

[20 Mad. 33

——, s. 39.

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[20 Mad. 498

——, s. 39.

—Service by affixing notice of intention to sell on some conspicuous part of the tenant's land—Residence of tenant in foreign territory.] The provision of s. 39 of the Madras Rent Recovery Act that the notice of an intention to sell the land should be served "at his usual place of abode," denotes some place in the neighbourhood of the land in respect of which the *pottah* was tendered, and does not apply when the tenant resides in foreign territory. OLIVER *v.* ANANTHARAMAYYAN.

[18 Mad. 30

——, s. 40.

See LIMITATION ACT, ART. 12.

[20 Mad. 33

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[20 Mad. 498

——, s. 69 and s. 18.

—Deduction of time occupied in obtaining copy of judgment appealed against—Limitation Act (1877), *s.* 12.] A tenant whose property had been distrained for arrears of Rent sued under the Madras Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against should be deducted in the computation of the thirty days' period of limitation:—*Held*, that the appellant was not entitled to have the deduction made, the provisions of s. 12 not being applicable to an appeal filed under s. 69 of the Madras Rent Recovery Act, and that the appeal was barred by limitation. AKKAPPA NAYANIM *v.* SITHALA NAIDU.

[20 Mad. 476

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865—*concld.*

——, s. 76.

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[17 Mad. 298

——, s. 78.

—Limitation—Suit to recover property wrongfully distrained.] The plaintiff sued to recover certain property wrongfully distrained by the defendant who was his landlord, or in the alternative for its value. The defendant had tendered no *pottah* to the plaintiff, but the distraint had taken place professedly under the Madra Rent Recovery Act. The suit was not brought within six months from the date of the wrongful distraint:—*Held*, that the suit was not barred under the Madras Rent Recovery Act, s. 78. GOUNDAN *v.* RANGAYA GOUNDAN.

[20 Mad. 449

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864).

——, s. 11.

—Attachment of gathered crops belonging to a tenant—Right of Government to distrain for arrears of revenue.] Government can attach for arrears of revenue under s. 11 of Madras Act II of 1864 the gathered products belonging to a tenant, provided that the products are of the land on account of which the arrears of revenue have accrued. KRISHNA CHADAGA *v.* GOVINDA ADIGA.

[17 Mad. 404

——, s. 35.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

[17 Mad. 247

——, s. 38.

See BENAMI TRANSACTION—GENERAL CASES.

[18 Mad. 469

1.—s. 38—.*Sale for arrears of revenue—Confirmation of sale after cancellation.*] When a Collector has passed an order under s. 38 of Madras Act II of 1864, setting aside a sale for arrears of revenue, he cannot subsequently confirm the sale. KALIAPPA GOUNDEN *v.* VENKATACHALLA THEVAN.

[20 Mad. 253

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)—*continued.*

——, s. 38.—*Sale for arrears of revenue—Suit by purchaser for possession—Plea that it was a benami purchase.*] The purchaser at a sale held for arrears of revenue sued for possession of the land. It was pleaded that his purchase was made *benami* for the persons from whom the defendant derived title:—*Held*, that the Madras Revenue Recovery Act, s. 38, did not debar the defendant from raising this plea, and that the averments on which it was based having been proved, the suit should be dismissed. SUBBARAYAR *v.* ASIRVATHA UPADESAYYAR.

[29 Mad. 494

2.—s. 38 and s. 59.—*Sale for arrears of revenue—Purchase by Government — Subsequent sale by Government—Suit by owner of a share in the mittah for cancellation of second sale—Limitation.*] The plaintiff was the owner of a share in a *mittah* which was sold on the 15th February, 1886, for arrears of revenue and bought by Government, who, on the 16th June, 1886, sold it to the first defendant, notifying the resale in the form prescribed under Madras Act II of 1864. The first defendant subsequently resold portions of the *mittah* to defendants 3 and 5 to 8. The plaintiff sued for cancellation of the second sale so far as his share was concerned, instituting a suit for this purpose on the 31st March, 1890:—*Held* (1) that the sale of the 16th June, 1886, was not a sale under s. 38 of Act II of 1864, although the notification of the sale was in the form prescribed by that Act, but a sale by Government of property that had become its own by reason of the purchase at the prior sale of 15th February; (2) that, even assuming the sale of the 16th June, 1886, to have been a sale under s. 38 of Act II of 1864, the suit was time-barred under s. 59 of that Act, since it should have been brought within six months from the date of the plaintiff's majority, *viz.*, the 29th November, 1888:—*Held*, that the limitation prescribed by s. 59 of Madras Act II of 1864 is applicable to sales which are illegal by reason of contravening some express law, as well as to sales which are irregular. *Gobind Lal Roy* v. *Ramjanam Misser*, I. L. R. 21 Calc. 70, referred to. GOUNDAN *v.* GOUNDAN.

[17 Mad. 134

——, s. 59.

See s. 38.

[17 Mad. 134

——, s. 59.—*Sale for arrears of revenue—Irregularity in sale—Want of due notification—Alleged fraud affecting sale—Limitation Act (XV of 1877), s. 8—Minor.*] When there are arrears of revenue so as to give jurisdiction to the Collector to sell under Madras Act II of 1864, the sale, however irregular, is a proceeding under that Act, for purposes of limitation, and is valid not only as between the Collector and the defaulter, but as between the Collector and the purchaser at the sale. *Venkata* v. *Chengadu*, I. L. R. 12 Mad. 168; and *Nilakandan* v. *Thandamma*, I. L. R. 9 Mad. 460, followed. The mere fact that one of the plaintiffs, in a suit brought to set aside a sale under Madras Act II of 1864, was a minor, was *held* not sufficient to save the limitation bar under s. 59 of Madras Act II of 1864, when an alleged fraud affecting the sale came to the knowledge of the other plaintiffs who were majors and were jointly interested with the minor more than six months prior to the institution of the suit, s. 8 of the Limitation Act being inapplicable to such cases. NARAYANAN NAMBUDRI *v.* DAMODARAN NAMBUDRI.

[17 Mad. 189

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)—*concluded.*

MADRAS REVENUE RECOVERY AMENDMENT ACT (MADRAS ACT III OF 1884).

——, s. 1, cl. 5.

See BENAMI TRANSACTION—GENERAL CASES.

[18 Mad. 469

MADRAS SALT ACT (MADRAS ACT IV OF 1889).

——, ss. 46 and 47.

See ESCAPE FROM CUSTODY.

[19 Mad. 310

MADRAS TOWNS NUISANCES ACT (MADRAS ACT III OF 1889).

See BENCH OF MAGISTRATES.

[18 Mad. 394

——, ss. 3, 6 and 7.—*Common gaming house—Vacant unenclosed site.*] The accused were found gaming on a vacant site, the property of the seventh accused. The seventh accused was convicted under the Madras Towns Nuisances Act, ss. 6 and 7, and the other accused under s. 7:—*Held*, that the site in question was not a common gaming house, and that the convictions were accordingly wrong. QUEEN-EMPRESS *v.* JAGANNAYAKULU.

[18 Mad. 46

——, ss. 3 and 11.

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.

[18 Mad. 490

MADRAS VILLAGE COURTS ACT (MADRAS ACT I OF 1889).

——, s. 13, proviso 3.—"*Land*" *includes* "*house.*"] In Madras Act I of 1889, s. 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent unless due under a written contract signed by the defendant is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA.

[20 Mad. 21

MAGISTRATE.

See BENCH OF MAGISTRATES.

[18 Mad. 394
[23 Calc. 194

——, Duty of.

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL.

[20 Mad. 388

See CRIMINAL PROCEDURE CODE, S. 523.

[22 Calc. 761

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, WITNESSES, &C.

[21 Calc. 29

——, Examination of, as witness.

See TRANSFER OF CRIMINAL CASE.

[21 Calc. 920

——, Opinion of, reference to, by Judge.

See SESSIONS JUDGE, DUTY OF.

[22 Calc. 805

——, Power of.

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS.

[20 Mad. 387

See CRIMINAL PROCEDURE CODE, S. 517.

[24 Calc. 499

See LOCAL INVESTIGATION.

[21 Calc. 920

See PENAL CODE, S. 186.

[24 Calc. 320

See POSSESSION, ORDER OF CRIMINAL COURT AS TO — LIKELIHOOD OF BREACH OF PEACE.

[24 Calc. 391

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

[21 Calc. 609
[22 Calc. 384, 387
[23 Calc. 37

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF CASE.

[22 Calc. 898

See RAILWAYS ACT, S. 113.

[20 Mad. 385

See REFERENCE TO HIGH COURT.

[23 Calc. 249, 250

MAGISTRATE—*concluded.*

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.

[18 Bom. 440
[17 All. 67

See SENTENCE—GENERAL CASES.

[20 Mad. 444

See TRANSFER OF CRIMINAL CASE.

[19 All. 249

See WITNESS — CRIMINAL CASES—EXAMINATION OF WITNESSES.

[18 All. 380

See WITNESS—CRIMINAL CASES — SUMMONING WITNESSES.

[24 Calc. 320

——, Statement made to.

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[18 Bom. 377

MAGISTRATE, JURISDICTION OF.

		Col.
1.	General Jurisdiction	... 783
2.	Transfer of Magistrates	... 785
3.	Powers of Magistrates	... 786
4.	Commitment to Sessions Court	... 786
5.	Special Acts	... 787
	(*a*) Cattle Trespass Act	... 787
	(*b*) Madras Abkari Act	... 787
	(*c*) Opium Act (I of 1878)	... 788
	(*d*) Railways Act (IX of 1890)	... 788

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[24 Calc. 316, 317 note

See CRIMINAL PROCEDURE CODE, S. 437.

[22 Calc. 573

See CRIMINAL PROCEDURE CODE, S. 487.

[20 Mad. 383

See CRIMINAL PROCEEDINGS.

[17 Mad. 402

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[24 Calc. 638

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[18 Mad. 402

See RAILWAYS ACT, S. 113.

[18 Bom. 440

See RECOGNIZANCE TO KEEP PEACE.

[21 Calc. 621
[17 All. 67
[24 Calc. 344

MAGISTRATE, JURISDICTION OF— *continued.*

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[18 Mad. 402

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.

[22 Calc. 176

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[18 Mad. 487
[19 Mad. 18

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.

[18 Mad. 490

See VILLAGE CHOWKIDARS ACT, s. 8.

[23 Calc. 421

See WARRANT OF ARREST.

[20 Mad. 235, 457

(1) GENERAL JURISDICTION.

1.—*Disqualification of Magistrate or Judge—Personal interest — Criminal Procedure Code* (1882), *s.* 555 — *Bombay District Municipal Act* (*VI of* 1873), *s.* 84—*Municipal offence.*] The mere fact that a Magistrate is the Vice-President of a District Municipality and Chairman of the Managing Committee does not disqualify him from trying a charge of an offence brought by the Municipality under Bombay Act VI of 1873; but if he has taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest, over and above what may be supposed to be felt by every municipal commissioner in the affairs of the municipality. QUEEN-EMPRESS *v.* PHEROZSHA PESTONJI.

[18 Bom. 442

2.—*Disqualification of Magistrate—Criminal Procedure Code* (1882), *s.* 555 — *Personal interest.*] The accused was a compounder in the employ of Treacher & Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. It appeared that the Magistrate was a shareholder in the company which prosecuted the accused:—*Held*, that the Magistrate was disqualified from trying the case. As a shareholder of the company, he had a pecuniary interest, however small, in the result of the accusation, and was therefore "personally interested" in the case within the meaning of s. 555 of the Code of Criminal Procedure (Act X of 1882). The words "personally interested" in the section are not intended to exclude pecuniary as distinguished from a personal interest. IN RE RODRIGUES.

[20 Bom. 502

MAGISTRATE, JURISDICTION OF— *continued.*

(1) GENERAL JURISDICTION—*continued.*

3.—*Criminal Procedure Code* (1882), *ss.* 526, *and* 555 — *Incompetence of Magistrate who is Chairman of Municipality to try municipal cases—"Any case," Meaning of — Prosecution under Bengal Municipal Act* (*Bengal Act III of* 1884)—*Grounds for transfer of case.*] An appeal against a conviction under s. 217, cl. 5 of the Bengal Municipal Act (Bengal Act III of 1884), was preferred to the District Magistrate, who was also Chairman of the Municipality. On an application to the High Court for a transfer to the Court of some other Magistrate:—*Held*, that apart from the question whether there was a disqualification under s. 555 of the Criminal Procedure Code, the case was one which it was expedient should be transferred to another Court. *Per* BANERJEE, J.—Section 555 of the Criminal Procedure Code renders a Magistrate incompetent to try a municipal case if he is the Chairman of the Municipality. The words "try any case" in that section are comprehensive enough to include the hearing of an appeal. NISTARINI DEBI *v.* GHOSE.

[23 Calc. 44

4.—*Criminal Procedure Code* (1882), *ss.* 537 *and* 555—*Disqualifying interest of Magistrate—Investigations preliminary to a trial—"Personally interested"—"Court of competent jurisdiction."*] Where investigations of the Police preliminary to a trial are directed to a very considerable degree by a Magistrate, such Magistrate is personally interested in the case, and is disqualified from trying it by the provisions of s. 555 of the Criminal Procedure Code. A disqualifying interest may result from a purely official connection with the initiation of criminal proceedings. *Girish Chunder Ghose* v. *Queen-Empress*, I. L. R. 20 Calc. 857, followed. A Magistrate who, in consequence of such a personal disqualification, is forbidden by law to try a particular case, though he may be authorised generally to try cases of the same class, cannot be said, with respect to that case, to be a Court of competent jurisdiction, and his orders are not covered by the saving provisions of s. 537. SUDHAMA UPADHYA *v.* QUEEN-EMPRESS.

[23 Calc. 328

5.—*Criminal Procedure Code* (1882), *s.* 555—*Magistrate personally interested — Magistrate giving evidence before himself.*] Where a Magistrate, in whose Court a complaint of rioting and mischief had been filed, made a personal inspection of the *locus in quo*:—*Held*, that by so doing he had made himself a witness in the case and had thereby rendered himself incompetent to try it:—*Held*, further, that where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. QUEEN-EMPRESS *v.* MANIKAM.

[19 Mad. 263

MAGISTRATE, JURISDICTION OF—*continued.*

(1) GENERAL JURISDICTION—*concluded.*

6.—*Disqualification of Magistrate to try case—Criminal Procedure Code* (1882), *ss.* 202, 540 *and* 555 — *Examination of witnesses*] Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code :—*Held*, that there is nothing in the Criminal Procedure Code which disqualifies a Magistrate who holds a preliminary inquiry under s. 202 from trying the case himself, and that the provisions of s. 555 had no application, inasmuch as the Magistrate had not initiated or directed the proceedings against the accused person, nor taken an active part in the arrest or collection of evidence against such person:—*Held*, also, that the Magistrate was strictly within his rights under s. 540 of the Criminal Procedure Code in receiving fresh evidence after evidence on both sides had been taken and the case adjourned for judgment, inasmuch as the case was still a pending case, when such evidence was taken. IN THE MATTER OF ANANDA CHUNDER SINGH *v.* BASU MUDH.

[24 Calc. 167

7.—*Disqualification of Magistrate to try case—Witness—Omission to record statement of accused under Code of Criminal Procedure* (1882), *s.* 364.] Where a Magistrate before whom an accused person is brought omits to record, as provided by s. 364 of the Criminal Procedure Code, statements made by the accused, he does not thereby make himself a witness, and so become disqualified from trying the case. QUEEN-EMPRESS *v.* FATTAH CHAND.

[24 Calc. 499

8.—*Disqualification of Magistrate—Magistrate holding local investigation—Witness.*] A Magistrate by going to view a place for the purpose of understanding the evidence does not thereby make himself a witness in the case, and render himself disqualified from trying it. IN THE MATTER OF THE PETITION OF LALJI.

[19 All. 302

(2) TRANSFER OF MAGISTRATES.

9.—*Order passed by a Magistrate after his successor had entered upon his appointment—Criminal Procedure Code* (1882), *s.* 12.] By an order of the Local Government Babu Dila Ram, a Magistrate exercising jurisdiction in the Meerut district, was transferred from that district "on the arrival of Kunwar Kamta Prasad":—*Held*, by BANERJI, J., that the effect of the order of transfer so expressed was that Babu Dila Ram ceased to have jurisdiction as a Magistrate within the Meerut district from the time when Kunwar Kamta Prasad commenced work as a Magistrate in that district:—*Held* by AIKMAN, J., that the effect of

MAGISTRATE, JURISDICTION OF—*continued.*

(2) TRANSFER OF MAGISTRATES—*concluded.*

the said order was that Babu Dila Ram ceased to have jurisdiction on the arrival of Kunwar Kampta Prasad; but whether such arrival was his arrival within the limits of the district or at head-quarters was not clear from the order. *Empress of India* v. *Anand Sarup*, I. L. R. 3 All. 563, referred to. BALWANT *v.* KISHEN.

[19 All. 114

(3) POWERS OF MAGISTRATES.

10.—*Criminal Procedure Code* (1882), *s.* 487—*Power of Magistrate to try an accused person for disobedience of a summons issued by him as Mamlatdar—Penal Code, s.* 174—*Construction of statute.*] A Magistrate is not debarred by s. 487 of the Code of Criminal Procedure (Act X of 1882) from trying an accused person under s. 174 of the Penal Code (XLV of 1860) for disobedience of a summons issued by him in his capacity of Mamlatdar. In construing s. 487 of Act X of 1882, effect must be given to the words "as such Judge or Magistrate," and these words must be read in connection with all the three classes of offences previously referred to. *Queen-Empress* v. *Sarat Chandra Rakhit*, I. L. R. 16 Calc. 766, followed. QUEEN-EMPRESS *v.* RAIJI DAJI.

[18 Bom 380

11.—*Distress warrant—Claim by third party to the property distrained—Criminal Procedure Code* (1882), *s.* 386.] A Magistrate, who has issued a distress warrant under s. 386 of the Criminal Procedure Code, is not required by law to try any claim which may be preferred to the ownership of the property distrained. QUEEN-EMPRESS *v.* GASPER.

[22 Calc. 935

12.—*Criminal Procedure Code* (1882), *s.* 144—*Executive powers of Magistrate—Order which might have the effect of interfering with the execution of a decree of a Civil Court.*] A District Magistrate has no power, either under s. 144 of the Code of Civil Procedure or in his executive capacity, to make an order for the re-building of a structure on private land which has fallen into disrepair or been pulled down; neither has he power to make any order which would have the direct effect of interfering with the execution of a decree of a Civil Court. IN THE MATTER OF THE PETITION OF RAHMAT-ULLAH.

[17 All. 485

(4) COMMITMENT TO SESSIONS COURT.

13.—*Power of commitment to Sessions Judge—Code of Criminal Procedure* (1882), *s.* 254—*Penal Code (Act XLV of* 1860), *s.* 147—*Circular order No.* 9 *of 6th September*, 1869—*Rioting.*] The commitment of a case under s. 147 of the Penal Code to the Court of Session by a Deputy Magistrate is not necessarily illegal. Although the case is shown to be triable only by a

MAGISTRATE, JURISDICTION OF—*continued.*

(4) COMMITMENT TO SESSIONS COURT—*concluded.*

Magistrate under the second schedule of the Criminal Procedure Code, there is nothing in s. 254 of the Criminal Procedure Code which prevents a Magistrate committing a case under s. 147 of the Penal Code to the Court of Session, provided he finds that the accused has committed an offence, which, in his opinion, cannot be adequately punished by him. The instructions contained in Circular No. 9 of 6th September, 1869, are to be read subject to the provisions of the Criminal Procedure Code. QUEEN-EMPRESS *v.* KAYEMULLAH MANDAL.

[24 Calc. 429

(5) SPECIAL ACTS.

(*a*) CATTLE TRESPASS ACT.

14.—*Cattle Trespass Act* (*I of* 1871), *ss.* 20 *and* 23—*Special jurisdiction—Criminal Procedure Code* (1882), *ss.* 1 *and* 192—*Transfer of criminal case.*] The jurisdiction conferred by ss. 20 to 23 of the Cattle Trespass Act (I of 1871) is a special jurisdiction, and, as such, it is under s. 1 of the Criminal Procedure Code (Act X of 1882) unaffected by its provisions; and therefore s. 192 does not authorise the transfer of a case to which ss. 20 to 23 of the Cattle Trespass Act apply. SHAMA *v.* LECHHU SHEKH.

[23 Calc. 300

15.—*Cattle Trespass Act* (*I of* 1871), *ss.* 20—23—*Order by a Magistrate other than the Magistrates specified in s.* 20—*Criminal Procedure Code* (1882), *ss.* 28, 192, 529 *and* 537—*Power of District Magistrate to transfer cases to a Subordinate Magistrate — Compensation, Order awarding.*] Section 192 of the Criminal Procedure Code (Act X of 1882) does not authorise a District Magistrate to transfer for trial to a Subordinate Magistrate cases which are not within the powers of that Magistrate to try either under s. 28 of the Code or under some special or local law. A District Magistrate cannot transfer to any Magistrate cases under s. 2) of the Cattle Trespass Act (I of 1871) which are triable only by the two classes of Magistrates specified in that section. An order awarding compensation under s. 22 of the Act passed by any other Magistrate is illegal, and cannot be cured by the provisions of s. 529 or s. 537 of the Criminal Procedure Code. RAGHU SINGH *v.* ABDUL WAHAB.

[23 Calc. 442

(*b*) MADRAS ABKARI ACT.

16.—*Madras Act I of* 1886, *s.* 43—*Default by persons bailed to appear before the abkari inspector—Procedure—Criminal Procedure Code* (1882), *s.* 514.] Section 43 of the Madras Abkari Act gives a Magistrate enforcing a penalty on the application of an abkari inspector jurisdiction to proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear in his own Court. When an abkari inspector, therefore, under the Abkari Act, s. 43, forwards a bail bond to a Magistrate in order that payment may be compelled of the penalty mentioned therein, the Magistrate should call upon the person liable to appear and show cause against such order being made, and should otherwise observe the procedure prescribed in Criminal Procedure Code, s. 514. QUEEN-EMPRESS *v.* PALAYATHAN.

[18 Mad. 48

MAGISTRATE, JURISDICTION OF—*concluded.*

(5) SPECIAL ACTS—*concluded.*

(*b*) MADRAS ABKARI ACT—*concluded.*

(*c*) OPIUM ACT (I OF 1878).

17.—*Opium Act* (*I of* 1878), *s.* 9—*Criminal Procedure Code* (1882), *s.* 29—*Commitment by Magistrate to Court of Session of case exclusively triable by Magistrate.*] *Held* that, inasmuch as a conviction of an offence punishable under Act I of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session. *In the Matter of Indrobee Thaba*, 1 W. R. Cr. 5; and *Regina* v. *Donoghue*, 5 Mad. 277, referred to. QUEEN-EMPRESS *v.* SCHADE.

[19 All. 465

(*d*) RAILWAYS ACT (IX OF 1890).

18.—*Railways Act* (*IX of* 1890), *s.* 125—*Permitting cattle to stray upon a railway—Discretion of Magistrate.*] When the owner of cattle, which have been allowed to stray upon a railway, is prosecuted under the Railway Act, 1890, s. 125, cl. 1, the Magistrate is bound to ascertain whether the person charged was himself guilty. QUEEN-EMPRESS *v.* ANDI.

[18 Mad. 228

MAHOMEDANS.

See JURISDICTION OF CIVIL COURT—CASTE.

[20 Bom. 190

MAHOMEDAN LAW.

See CONVERTS.

[20 Bom. 53

See GRANT—CONSTRUCTION OF GRANTS.

[18 Mad. 257

See HUSBAND AND WIFE.

[21 Bom. 77

MAHOMEDAN LAW — ACKNOWLEDGMENT.

1.—*Acknowledgment, Effect of, on illegitimate children.*] The doctrine of acknowledgment is not applicable to a case in which the paternity of the child is known, and it cannot therefore be called in to legitimatise a child which is illegitimate by reason of the unlawfulness of the marriage of its parents. *Mahomed Allahdad Khan*

MAHOMEDAN LAW — ACKNOWLEDGMENT—*concluded.*

v. *Muhammad Ismail Khan*, I. L. R. 10 All. 289, followed. AIZUNNISA KHATOON *v.* KARIMUNNISSA KHATOON.

[23 Calc. 130

2.—*Illegitimacy of birth—Insufficiency of father's acknowledgment without intention to legitimate—Marriage, Validity of.*] On the question of the legitimacy of a son born to a Mahomedan by a Burmese woman, the question did not arise on this appeal whether the father could have entered into a valid marrriage with the mother without her having relinquished Buddhism. The Court below found against her alleged conversion to the Mahomedan religion; and also found upon the facts that no marriage of the parents as distinguished from concubinage had taken place. The latter finding was affirmed. As to the question whether the son born to them had been legitimated by the father's acknowledgment of him, it was *held*, that, under the Mahomedan law, the legitimation of a son, born out of legal wedlock, may be effected by the force of his father's acknowledgment of his being of legitimate birth; but that a mere recognition of sonship is insufficient to effect it. Acknowledgment in the sense meant by that law is required, *viz.*, of antecedent right, and not a mere recognition of paternity. *Ashruff-ood-dowla Ahmed Hossein* v. *Hyder Hossein Khan*, 11 Moo. I. A. 94, referred to and followed. ABDUL RAZAK *v.* AGA MAHOMED JAFFER BINDANIM.

[21 Calc. 666
[L. R. 21 I. A. 56

MAHOMEDAN LAW—CUSTOM.

See CONVERTS.

[20 Bom. 53

See LIMITATION ACT, ART. 120.

[21 Calc. 157

See MAHOMEDAN LAW—ENDOWMENT.

[22 Calc. 324
[L. R. 22 I. A. 4
[19 All. 211

See MAHOMEDAN LAW—KAZI.

[18 Bom. 103

—*Succession to property among Kanchans—Practices not recognisable by law as customs—Immoral customs.*] Among Mahomedan Kanchans, practices relating to their holding and inheritance of property, having an immoral tendency, were held to be not recognisable as customs, or enforceable as law. To recognise practices tending to promote prostitution, which the Mahomedan law reprobates and prohibits absolutely, would be contrary to the policy of that law. Where property left by a female Kanchani, deceased, was claimed by her legitimate kindred, it was *held* that an "adoption," so called, in conformity with those practices, had not operated to separate her from the family in which she was born. The mode in which her property had been acquired was not the subject of the present question, which was only concerned with the right of personal succession to it; and that property was *held* to be distributable according to the rules of the Mahomedan law governing inheritance. GHASITI *v.* UMRAO JAN; GHASITI *v.* JAGGU.

[21 Calc. 149
[L. R. 20 I. A. 193

MAHOMEDAN LAW—DEBTS.

1.—*Suit by creditor of deceased Mahomedan against his heir—Administration, Suit for—Representative of deceased person.*] In a suit against the widow of a Mahomedan on the ground that she was in possession of his estate, and where there were other heirs of the deceased, *held*, following the principle laid down in the case of *Mutty Jan* v. *Ahmed Ally*, I. L. R. 8 Calc. 370, that the suit was properly brought against the widow, and that her liability was to be measured, not by the extent of her interest in her late husband's property, but by the amount of the assets of his estate which had come into her hands, and which she had not duly disbursed in the discharge of the liabilities to which the estate was subject at her husband's death. AMIR DULHIN *alias* MOHAMDI JAN *v.* BAIJ NATH SINGH *alias* BAIJU SINGH.

[21 Calc. 311

2.—*Money due by a deceased Mahomedan—Suit by a creditor against only one of the heirs of the deceased—Right of suit—Debtor and creditor.*] A suit for money due by a deceased Mahomedan lies against one of his heirs in respect of his share in the property left by the deceased, though it may not bind the share of another heir. *Assamathemunissa Bebee* v. *Roy Lutchmeeput Singh*, I. L. R. 4 Calc. 142; and *Jafri Begam* v. *Amir Muhammed Khan*, I. L. R. 7 All. 822 (827), followed. *Quære:* Whether there having been no division of the estate, the share of the heir sued is liable for the whole debt of the deceased. *Bussunteram Marwary* v. *Kamaludin Ahmed*, I. L. R. 11 Calc. 421; and *Pirthi Pal Singh* v. *Husaini Jan*, I. L. R. 4 All. 361, referred to. AMBASHANKAR HARPRASAD *v.* ALI RASUL.

[19 Bom. 273

3.—*Mahomedan family—Mortgage by Mahomedan father—Suit by mortgagee against minor son represented by mother after mortgagor's death and decree for possession—Some of the heirs not parties—Subsequent suit by daughters as heirs of mortgagor for redemption.*] When in a mortgage suit the debt is due from the father, and after his death the property is brought to sale in execution of a decree against the widow or some of the heirs of the mortgagor, and the whole property is sold, then the heirs not brought on the record cannot be permitted to raise the objection that they are not bound by the sale simply because they are not parties to the record. This prin-

MAHOMEDAN LAW—DEBTS—*concld.*

ciple of law applies as much to a Mahomedan family as to a Hindu family governed by the Mitakshara law. *Hari* v. *Jairam*, I. L. R. 14 Bom. 597; and *Khurshetbibi* v. *Keso*, I. L. R. 12 Bom. 101, referred to and followed. One *N* mortgaged his property in 1862 to *B*, and died in 1864, leaving a widow, a son, and two daughters. In 1864, *B* (the mortgagee) sued the minor son, represented by his mother, for possession as owner under the *gahan lahan* clause and got a decree on the 30th September, 1864, and obtained possession in 1865. To this suit the daughters of *N* were not parties. *B* held the land till 1887, and then sold it to *S*. In 1890, *N's* daughters brought this suit against *B* and *S* to redeem the mortgage of 1862, contending that they were not bound by *B's* suit in 1864, not having been parties to it:—*Held*, that the plaintiffs could not redeem. They were bound by the decree obtained by the mortgagee in 1864. DAVALAVA *v.* BHIMAJI DHONDO

[20 Bom. 338

MAHOMEDAN LAW—DOWER.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 All. 400

1.—*Law in Oudh—Discretionary power of the Courts over the amount of dower—The Oudh Laws Act (XVIII of 1876), s. 5.*] In a suit by a wife for her dower, the Appellate Court altered the amount decreed by the first Court, as a reasonable sum payable in lieu of an excessive one, which the husband had on the date of the marriage nominally entered in a *nikahnama* as the wife's dower. Both Courts acted under the Oudh Laws Act (XVIII of 1876), s. 5. The Judicial Committee having examined the grounds on which each of the Courts had exercised its discretionary power, considered the reason given by the first Court to be sound and restored its decree. SULEMAN KADR *v.* MEHDI BEGUM SURREYA BAHU.

[21 Calc. 135

[L. R. 20 I. A. 144

2.—*Widow's lien for dower—Consent of heirs to possession of widow—Suit by heir claiming possession without payment of proportionate share of dower—Burden of proof as to nature of widow's possession.*] *Held*, *per* BURKITT, J.—Where a Mahomedan widow is in possession of the property of her deceased husband, having obtained such possession lawfully and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled as against the other co-heirs of her husband to retain possession of such property until her dower debt is paid. It is immaterial to such widow's right to retain possession that such possession was obtained originally without the consent of the other co-heirs. *Bachun* v. *Hamid Hossein*, 14 Moo. I. A. 377; *Aziz-ullah Khan* v. *Ahmad Ali Khan*, I. L. R. 7 All. 353; and *Tajim* v. *Wahed Ali*, 22 W. R. 118, referred to. AMANI BEGAM *v.* MUHAMMAD KARIM-ULLAH KHAN.

[16 All. 225

MAHOMEDAN LAW—DOWER—*concld.*

—*Held*, in the same case, on appeal under the Letters Patent by EDGE, C. J., and BANERJI, J.—When a Mahomedan widow is in possession, and has been for some time in undisturbed possession of property which had been of her husband in his lifetime, and dower is admitted or proved to be due to her, it lies upon the heir who claims partition without payment of his proportion of dower to prove that the Mahomedan widow was not let into possession by her husband in lieu of dower, or did not obtain possession in lieu of dower after her husband's death with the consent or by the acquiescence of the heirs. MUHAMMAD KARIM-ULLAH KHAN *v.* AMANI BEGAM.

[17 All. 93

3.—*Lien of widow for dower—Widow taking possession against the consent of the other heirs.*] If a Mahomedan widow entitled to dower has not obtained possession of property of her deceased husband lawfully, that is, by contract with her husband, by his putting her into possession, or by her being allowed with the consent of the heirs on his death to take possession in lieu of dower, and thus obtained a lien for her dower, she cannot obtain that lien by taking possession adversely to the other heirs of property to the possession of which they, and she in respect of her share in the inheritance, are entitled. —*Bachun* v. *Hamid Hossein*, 14 Moo. I. A. 377; *Wahid-un-nissa* v. *Shabrattun*, 6 B. L. R. 54; *Bazayet Hossein* v. *Dooli Chund*, I. L. R. 4 Calc. 402; L. R. 5 I. A. 211; *Meerun* v. *Najeebun*, 2 Agra (1867) 335; *Ali Muhammad Khan* v. *Aziz-ul-lah Khan*, I. L. R. 6 All. 50; and *Mehrun* v. *Kubeerun*, 13 W. R. 49; 6 B. L. R. 60 note, referred to. *Woomatool Fatima Begum* v. *Meerunmun-nissa Khanum*, 9 W. R. 318; *Ahmad Hossein* v. *Khodeja*, 10 W. R. 369; 3 B. L. R. A. C. 28 note; and *Bolund Khan* v. *Janee*, 2 N. W. (All. 1870) 319, distinguished. AMANAT-UN-NISSA *v.* BASHIR-UN-NISSA.

[17 All. 77

4.—*Suit by heirs of Mahomedan widow for her dower—Alienation of property of the deceased husband by his heirs pendente lite.*] While a suit for the dower debt due to a Mahomedan widow was pending on behalf of her heirs, the heirs of her deceased husband mortgaged certain property which had been of the deceased in his lifetime. The heirs of the widow obtained a decree which could only be executed against the assets of the deceased husband:—*Held*, that this decree took priority over the mortgagee's decree and a sale held in execution thereof. *Bazayet Hossein* v. *Dooli Chand*, I. L. R. 4 Calc. 402. YASIN KHAN *v.* MUHAMMAD YAR KHAN.

[19 All. 504

5.—*Mortgage by widow in possession in lieu of dower of immoveable property which had been of her husband.*] A Mahomedan widow in possession of immoveable property of her late husband in lieu of her dower has no power to mortgage such property. CHUHI BIBI *v.* SHAMS-UN-NISSA BIBI.

[17 All. 19

MAHOMEDAN LAW—ENDOWMENT.

1.—*Wakf—Deed invalid as a wakfnama—Attempted family settlement in perpetuity—Ultimate, but illusory, gift for charitable purposes.*] An instrument, nominally a *wakfnama*, expressly purporting to make property *wakf*, settled it in perpetuity on the family of the dedicators, with an ultimate gift for the benefit of the poor, only to take effect upon the failure of the descendants of the family:—*Held*, that a gift to the poor might be illusory from the smallness of the amount, or from its uncertainty or remoteness; and that the period when this gift was to take effect was so uncertain, and probably so remote, that the gift was illusory. Therefore, according to Mahomedan law, it did not establish a *wakf*. *Mahomed Ahsanulla Chowdhury* v. *Amarchand Kundu*, I. L. R. 17 Calc. 498; L. R. 17 I. A. 28; and *Abdul Gafur* v. *Nizamudin*, I. L. R. 17 Bom. 1; L. R. 19 I. A. 170, referred to and followed as to the principle that the charitable purpose, in order to establish a *wakf*, must be substantial and not illusory. Provision for the dedicator's family, out of the appropriated property, may be consistent with the making a valid *wakf*, where the appropriation is substantially for a pious or charitable purpose. But, as family settlement in perpetuity is contrary to the Mahomedan law, and as successions of inalienable life interests are forbidden, such dispositions cannot be rendered legal by the mere addition of the words that they are made as *wakf*, or for the benefit of the poor, where no substantial benefit is conferred on the latter. The decision of the Full Bench in *Bikani Mia* v. *Shuk Lall Poddar*, I. L. R. 20 Calc. 106, approved. ABUL FATA MAHOMED ISHAK *v.* RASAMAYA DHUR CHOWDHRI.

[22 Calc. 619
[L. R. 22 I. A. 76

2.—*Wakf—Charitable and religious trusts—Perpetuities, Rule against.*] A Mahomedan, by an instrument in writing, dedicated certain moveable and immoveable properties for the upkeep of her husband's tomb and "for the daily, monthly and annual expenses of the aforesaid mausoleum, such as lighting, frankincense, flowers, and the salaries of repeaters of Koran and readers of benedictions, &c., as well as for the annual *fatheha* ceremonies of the deceased, and after my death for my annual *fatheha* ceremony." It was found that a traveller's inn was erected by the endower of the property as an appurtenance to the tomb, and that the performance of the ceremonies necessarily involved the distribution of charity, and that the lights at the tomb were of use to passers-by:—*Held*, on appeal, reversing the judgment of DAVIES, J., that the instrument was not a valid *wakf*, and was void as contravening the rule against perpetuities. KALELOOLA SAHIB *v.* NUSEERUDEEN SAHIB.

[18 Mad. 201

3.—*Wakf—Illusory dedication—Fateha ceremony—Custom as a guide to interpreting the intention of a wakif.*] In determining whether a disposition of property made by a Mahomedan is or is not a valid *wakf*, the intention of the

MAHOMEDAN LAW—ENDOWMENT —*continued.*

wakif may be interpreted by reference to custom prevailing at the time the *wakf* was made; and if there is found to be a substantial dedication of the property dealt with to charitable uses, that dedication will constitute a valid *wakf*. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu*, I. L. R. 17 Calc. 498; and *Abul Fata Mahomed Ishak* v. *Russomoy Dhur Chowdhry*, I. L. R. 22 Calc. 619; L. R. 22 I. A. 76, referred to. PHUL CHAND *v.* AKBAR YAR KHAN.

[19 All. 211

4.—*Suit against directors or Mushavirs of a mosque — Board of directors not properly constituted under the rules of the mosque—Liability of directors for acts done by board not properly constituted — Appointment of officers — Management of property—Liability of provisional committee assuming authority to act—Trustees—Limitation Act (XV of 1877), Art. 120—Kazi—Act II of 1864 and Bombay Act IV of 1864—Nazir of mosque, Liability of—Parties.*] A certain Mahomedan mosque in Bombay, known as the Juma Masjid, was possessed of considerable property. The administration of the mosque and its property was carried on under rules which had been drawn up and approved in the year 1834 at a special general meeting of the Jamat convened for the purpose in the course of a suit which had been filed in the Supreme Court against the then *Mushavirs* of the mosque. That suit was referred to the master to make certain inquiries, and in his report these rules were set out in full. His report was confirmed by the Court. The rules provided that the mosque and its property should be managed by the *Kazi* of Bombay and ten *Mushavirs*, and that a Nazir should be appointed by them, and be subject to their control. The rules also prescribed the various duties of the *Kazi*, *Mushavirs*, and Nazir, and declared that the power of filling up vacancies should be exercised by the *Kazi* and *Mushavirs* collectively or by the *Kazi* and an absolute majority of the *Mushavirs*. In 1834, and for many years subsequently, there was, as there had always been, a "*Kazi* of Bombay" appointed under a *sanad* from Government. He held the appointment for life, and the office was not hereditary. In 1866, the then *Kazi* of Bombay died, but in consequence of the provisions of Act II of 1864 and Bombay Act IV of 1864, the Government made no new appointment, and the office lapsed. One *M*, however, assumed the office and was generally accepted by the community as *Kazi* of Bombay. He died in 1878, and upon his death, rival claimants sought the office of *Kazi* of Bombay. The *Mushavirs* were then advised that they could not select one of the rival *Kazis* to fill the office of *Kazi* of Bombay under the rules, and they therefore continued to manage the mosque without a *Kazi* in violation of the rules of 1834. Two of the *Mushavirs* (now relators) were of opinion that one of the rival applicants for the position should be appointed *Kazi*, and as their wishes were not acceded to, they ceased to attend the board, and as far as possible while retaining their offices, they thwarted the

MAHOMEDAN LAW—ENDOWMENT —*continued.*

action of the other *Mushavirs*. Subsequently in 1878 other vacancies occurred in the board. In 1888, the number of *Mushavirs* was reduced to six, and two of them (the relators), as above stated, took no part in the administration, so that the management was left in the hands of the first four defendants. In 1891, four new *Mushavirs* (defendants Nos. 6 to 9) were elected, and in that year the Advocate-General at the relation of the two dissatisfied *Mushavirs* filed this suit against the *Mushavirs*. The former Nazir of the *musjid* was also made a defendant (No. 5). He had held the office of Nazir from 1879 to 1891 when he resigned. The plaint set forth the irregularities which had taken place in the management in 1878 and prayed for the removal of the defendants (other than defendant No. 5) from the position of directors or *Mushavirs*, and for an account against all the defendants, and for a scheme, &c. The following were the principal charges made against the defendants in the plaint and at the hearing:—(1) The neglect to take steps to supply the place of the *Kazi* and the failure to keep up the proper number of the *Mushavirs*:—*Held*, as to this, that subsequently to 1878, the *Mushavirs* had no authority under the rules of 1834 to fill up vacancies as they occurred or to carry on the Government of the *musjid*. Since that year the *Mushavirs* were a provisional committee of management, kept up from time to time by co-optation, tacitly permitted by the *Jamat* to manage the affairs of the *musjid* until the original constitution could be restored or legally changed, that original constitution being for the time in abeyance. (2) The improper appointment in 1879 of one *O* (defendant No. 5) as Nazir:—*Held*, that the *Mushavirs* incurred no liability and deserved no censure for so doing. (3) The neglect to call for an annual account of the income and expenditure of the mosque under Rule 6:—*Held*, that this charge was not proved. (4) The neglect to purchase properties with the surplus income of the mosque as required by Rule 4. Upon this point it was contended that the defendants should be charged with interest on the uninvested funds, so as to make up for the loss of rents which would have been recovered if properties had been purchased. In answer to this claim it was argued (*a*) that, under the circumstances, the *Mushavirs* had no power to expend the funds of the mosque in purchasing property; and (*b*) that the claim was barred by limitation:—*Held*, that the claim fell within Art. 120 of the schedule to the Limitation Act (XV of 1877), and was barred except as to six years prior to the filing of the suit, but even as to this period the Court refused to order accounts to be taken against the defendants. There had been no dishonesty or improper dealing with the funds of the mosque. The highest at which the case could be put was that there had been error of judgment. In this the community had acquiesced. Moreover, the position of the parties had changed. Some of the *Mushavirs* were dead, others had resigned, and were not defendants to the suit, and it would be difficult to enforce contribution against them. The Court was further of opinion that, in any

MAHOMEDAN LAW—ENDOWMENT —*continued.*

case, it was very doubtful whether a provisional committee like the *Mushasirs* would have been justified in assuming the power of purchasing property. Had the property fallen in value, the purchase might perhaps have been repudiated. (5) Their neglect in not detecting sums appropriated by the bill-collectors of the mosque and getting in the same:—*Held*, that as a provisional committee who had assumed the management of the *musjid*, the defendants were bound to protect its interests. Of the money which they actually received, or which was paid into their account, they were actual trustees, but in addition to this they were officers of the *musjid* charged with the specific duty of superintending the Nazir and his accounts, and if the *musjid* had suffered loss by their neglect of duty, they were answerable for it. They neglected to examine the books, a cursory audit of which would have detected the defalcations of the bill-collectors. The Court therefore directed an account against them of the rents actually received, or which but for their wilful default or neglect they might have received from the bill-collectors. (6) Their neglect in allowing arrears of rent to accumulate and to be lost to the *musjid*:—*Held*, it was not the duty of the *Mushavirs* to look into the account of each individual tenant. Under the rules the Nazir, and not the *Mushavirs*, was entrusted with the collection of rents, and it was his duty to see that the rents were not allowed to fall unduly into arrear. It was not shown that, except at an exceptional time when the Nazir was ill, the rents were so much in arrear as to call for the active interference of the *Mushavirs*, or that the *musjid* had suffered undue loss under this head. The Court therefore refused relief, on this charge. (7) The non-payment into the Bank of sums in the hands of the Nazir when they exceeded Rs. 500:—*Held*, that the spirit of the rules had been complied with, and no loss had been shown. Defendant No. 5, as above stated, had acted as Nazir of the *musjid* from 1879 to July, 1891, when he resigned. Under the rules (see Rules 2 and 7) he was appointed by the directors and was under their orders, and was removeable at their pleasure. It was contended at the hearing that he was not a proper party to the suit, being merely the agent or servant of the directors and not a trustee:—*Held*, that he was properly made a defendant. Both under Mahomedan law and under the rules the Nazir was a public officer in charge of the mosque, and as such liable to account to the community. ADVOCATE-GENERAL OF BOMBAY *v.* ABDUL KADAR JITAKER,

[18 Bom. 401

5.—*Alienation of endowed property—Suit for assertion of khadimi rights—Sale of office to which are attached conduct of religious worship and performance of religious duties—Custom.*] The plaintiffs instituted a suit for a declaration that they were the *khadims* of a certain *durga* and, as such, entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the *durga*. They also claimed an

MAHOMEDAN LAW—ENDOWMENT —*concluded.*

injunction restraining the defendants from interfering with them in the exercise of that office. The plaintiffs claimed their *khadimi* rights partly by inheritance and partly by purchase, a custom of transferability by sale having been long recognised:—*Held*, that the suit, being a claim to an hereditary office, fell under Art. 124 of the Limitation Act, and was not barred by limitation. *Semble*; That a Mahomedan office to which are attached substantially the conduct of religious worship and the performance of religious duties, is not legally saleable, any custom to the contrary notwithstanding; and that, therefore, in so far as the title of the plaintiffs depended upon purchase, the suit failed. *Juggurnath Roy Chowdhury* v. *Kishen Pershad Surmah*, 7 W. R. 266; *Kuppa Gurakal* v. *Dorosami Gurakal*, I. L. R. 6 Mad. 76; *Mancharam* v. *Pranshankar*, I. L. R. 6 Bom. 298; and *Vurma Valia* v. *Ravi Vurma Kunhi Kutty*, I. L. R. 1 Mad. 235; L. R. 4 I. A. 76, referred to. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH.

[24 Calc. 83

6.—*Appointment of the religious superior of a Mahomedan institution—Custom as to such appointment—Undue influence how indicated—Object of pleadings—Issue not in terms fixed but afterwards raised.*] The object of any system of pleading is that each side may be made fully aware of the questions that are about to be argued in order that each may bring forward evidence appropriate to the issues. The claim here made was that the last preceding *sajjadanashin*, acting according to the custom of the institution of which he was the religious superior and manager, had appointed the plaintiff to succeed him on his decease. The finding of the first Court that he had this power by the custom was affirmed on this appeal. As to the fact of the appointment, it was not apparent at what stage of the suit the question had first been raised, whether the deceased had been of sound and disposing mind at the time of making it. The first Court found that he had been of sound mind at the time; but the Chief Court on appeal reversed this finding, and added that he had been, in their opinion, unduly influenced. As these questions, though not formally stated in the issues, had been sufficiently open upon the proceedings to give to each Court a right to form a judgment upon them, the Judicial Committee decided which was correct; and affirmed the finding of the first Court as to the soundness of mind of the deceased. Upon the question of undue influence, which was an issue different from that of the mental capacity of the deceased in appointing, their Lordships found no evidence of either coercion or fraud, under which such influence must range itself, citing *Boyse* v. *Rossborough*, 6 H. L. C. 1. They found no evidence of the exercise of any influence. The decision of the Chief Court was therefore reversed; and the decree of the first Court, in favour of the plaintiff, was maintained. SAYAD MUHAMMAD *v.* FATTEH MUHAMMAD.

[22 Calc. 324
[L. R. 22 I. A. 4

MAHOMEDAN LAW—GIFT.

1.—*Incomplete gift—Absence of relinquishment by donor.*] Where a Mahomedan woman made an oral gift of a house to her nephew on the occasion of his marriage, but subsequent to the gift continued to live with him in the house:—*Held*, that the gift was null and void, as there was no entire relinquishment of the house by the donor, and the case did not fall within the exceptions allowed by Mahomedan law. BAVA SAIB *v.* MAHOMED.

[19 Mad. 343

2.—*Validity of gift — Possession — "Musha."*] A deed, which was found in effect to be a deed of gift comprising zemindari and other property, was executed on the 22nd of May, 1890. It was registered on the 24th of May, and the donor died on the 26th. The deed recited—"I have placed the aforesaid donees in proprietary possession of the aforesaid property as my representatives." Mutation of names was subsequently obtained by one of the donees in his favour on the basis of the same deed:—*Held*, that this was a valid and effectual gift under the Mahomedan law. *Mahomed Buksh Khan* v. *Hosseini Bibi*, I. L. R. 15 Calc. 684; L. R. 15 I. A. 81; and *Muhammad Mumtaz Ahmad* v. *Zubaida Jan*, I. L. R. 11 All. 460; L. R. 16 I. A. 205, referred to. SAJJAD AHMAD KHAN *v.* KADRI BEGAM.

[18 All. 1

3.—*Alleged gift by a Mahomedan father to his son—Benami transaction—Evidence of transfer of ownership.*] Government securities were indorsed and delivered by a Mahomedan father to his son in the presence of the local Treasury Officer. On the question, raised after the father's death, whether this was intended to transfer the ownership, or was a *benami* transaction, leaving the true ownership in the father, the Courts below had drawn different inferences from the proved facts. The first Court decided that the ownership had been changed, the notes having been given with only a reservation of the temporary use of the interest. The High Court found that the ownership remained in the father. On a review of the possession of the parties at the time, and of their subsequent conduct down to the father's death, the Judicial Committee affirmed the judgment of the High Court, on the evidence, pointing out that the first Court's theory of the reservation differed from the case alleged by the defendant and from that actually made out by the plaintiff at the hearing. IBRAHIM ALI KHAN *v.* UMMAT-UL-ZOHRA.

[19 All. 267
[L. R. 24 I. A. 1

MAHOMEDAN LAW—GUARDIAN.

1.—*Mother of minor—Power to sell property of minor.*] According to Mahomedan law a mother, not being the legal guardian of her minor child, cannot do any act relating to the property of the minor so as to bind him. BABA *v.* SHIVAPPA.

[20 Bom. 199

MAHOMEDAN LAW—GUARDIAN—*concluded.*

2.—*Uncle of minor—Liability of minor for act of person without authority purporting to act as the guardian of the minor.*] The uncle of a minor Mahomedan purporting, though without authority, to act as the minor's guardian, made a mortgage of certain property belonging to the minor, and subsequently took a lease of the mortgaged property in favour of the minor. The minor having made default in payment, the mortgagee sued to recover rent:—*Held*, that the mortgagee was not entitled to recover, although, had the minor sued the mortgagee to avoid the mortgage, he might not have been able to succeed without paying compensation to the mortgagee to the extent to which he or his property had benefited by the money advanced on the security of the mortgage. *Ruttun* v. *Dhoomee Khan*, 3 Agra 21; *Bhutnath Dey* v. *Ahmed Hosain*, I. L. R. 11 Calc. 417; *Anapurnabai* v. *Durgapa Mahalapa*, I. L. R. 20 Bom. 150; *Baba* v. *Shivappa*, I. L. R. 20 Bom. 199; *Bukshun* v. *Doolhin*, 12 W. R. 337; 3 B. L. R. A. C. 423; and *Girraj Bakhsh* v. *Hamid Ali*, I. L. R. 9 All. 340, referred to. NIZAM-UD-DIN SHAH *v.* ANANDI PRASAD.

[18 All. 373

MAHOMEDAN LAW—INHERITANCE.

See CONVERTS.

[20 Bom. 53

See MAHOMEDAN LAW—CUSTOM.

[21 Calc. 149
[L. R. 20 I. A. 193

1.—*Hereditary Offices Act Amendment Act—(Bombay Act V of 1886), s. 2—Succession to vatan becoming the property of widow and daughter—Construction of statute.*] Section 2 of Bombay Act V of 1886 is not retrospective. A *vatan* having devolved on the widow and daughter of a deceased Mahomedan as his heirs, and each having become owner of her share in it, in so far as a *vatan* can be held in ownership:—*Held*, that on the death of the widow in 1890, leaving no qualified male heirs, the daughter was entitled to succeed as her heir. RAHIMKHAN *v.* FATU BIBI BINTESAHEB KHAN.

[21 Bom. 118

2.—*Childless widow—Land—Buildings.*] *Held*, following *Toonanjan* v. *Mehndee Begum*, 3 Agra, 13, that the childless widow of a Shia Mahomedan, though she takes nothing out of her deceased husband's land, inherits a share of the buildings left by him. UMARDARAZ ALI KHAN *v.* WILAYAT ALI KHAN.

[19 All. 169

See AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE; KOOLSOM BIBEE *v.* AGA MAHOMED JAFFER BINDANIM.

[25 Calc. 9
[L. R. 24 I. A. 196

MAHOMEDAN LAW—INHERITANCE—*concluded.*

3.—*Relinquishment of rights of inheritance—Relinquishment executed before ancestor's death.*] A Mahomedan sued to recover his share of the property of his mother, deceased. It appeared that before her death he had by a registered deed in consideration of Rs. 150 renounced all his claims on her estate:—*Held*, that the renunciation was binding on the plaintiff. KUNHI MAMOD *v.* KUNHI MOIDIN.

[19 Mad. 176

MAHOMEDAN LAW—KAZI.

—Office of Kazi — Hereditary office—Custom—Hereditary Offices Act (Bombay Act III of 1874), s. 9.] The office of *Kazi* is not an hereditary office, unless perhaps by special custom of the locality. Where such a custom is not established, property attached to the office is not *vatan* property, and the Collector has no power to make an order with respect to it under s. 9 of the Hereditary Offices Act (Bombay Act III of 1874). *Jamal valad Ahmed* v. *Jamal valad Jallal*, I. L. R. 1 Bom. 633; and *Daudsha* v. *Ismalsha*, I. L. R. 3 Bom. 72, followed. BABA KAKAJI SHET SHIMPI *v.* NASSARUDDIN VALAD AMINUDDIN KAZI.

[18 Bom. 103

See DHARAMDAS SAMBHUDAS *v.* HAFASJI.

[19 Bom. 250

MAHOMEDAN LAW—MARRIAGE.

1.—*Marriage with living wife's sister—Legitimacy of children of such marriage—Acknowledgment, Effect of, on illegitimate children.*] Under the Mahomedan law marriage with the sister of a wife who is legally married is void. The children of such marriage are illegitimate and cannot inherit. *Shureefoonisa* v. *Khizuroonisa Khanum*, 3 S. D. A. Sel. Rep. 210, referred to. The doctrine of acknowledgment is not applicable to a case in which the paternity of the child is known, and it cannot therefore be called in to legitimatise a child which is illegitimate by reason of the unlawfulness of the marriage of its parents. *Muhammed Allahdad Khan* v. *Muhammad Ismail Khan*, I. L. R. 10 All. 289, followed. AIZUNNISSA KHATOON *v.* KARIMUNNISSA KHATOON.

[23 Calc. 130

2.—*Shias—Marriage between a Mahomedan and a Christian.*] A Mahomedan woman of the Shia sect cannot contract a valid marriage according to Mahomedan rites with a Christian. BAKHSHI KISHEN PRASAD *v.* THAKUR DAS.

[19 All. 375

MAHOMEDAN LAW—MORTGAGE.

—Mortgage by widow — Power to mortgage shares of minors—Mahomedan law of sale.] In 1884, *I*, a Mahomedan, died intestate, leaving a widow, two sons, and two daughters. At the time of his death he was the owner of a certain house in Bombay. After his death his widow

MAHOMEDAN LAW — MORTGAGE — *concluded.*

and his eldest son *E* (without the consent of the other children who were minors) mortgaged the said house to the defendant. In 1894, a younger son and one of the daughters of *I* filed this suit, praying that their shares in the house might be ascertained and declared; that the house should be sold, and their shares in the proceeds handed over to them. The defendant pleaded that the plaintiffs' mother and adult brother *E* had mortgaged the house to him in 1891 as a security for a loan of Rs. 3,500 which they wanted to pay off debts incurred in rebuilding the house and to defray the marriage expenses of *E*. He contended that the mortgage was binding on the plaintiffs, having been made for the benefit of the family, and that, if not, the plaintiffs were bound to pay him the money due to him before claiming any share in the house:—*Held*, that the plaintiffs were entitled to their shares in the said house free and discharged of the mortgage executed to the defendant. The Mahomedan law makes no provision with regard to mortgages, as such transactions are, strictly speaking, unlawful, as they involve the payment of interest. As, however, mortgages do now exist among Mahomedans, they must be governed by the rules applicable to sales. To authorise a sale by the guardian of a Mahomedan minor, there must be an absolute necessity for the sale, or else it must bebfor the benefit of the minor. The money raised y the mortgage in question was not raised for any purpose specially authorised by Mahomedan law, and the purpose for which it was raised was not for the benefit of the minor. Consequently, the widow had no authority to mortgage their shares. HURBAI *v.* HIRAJI BYRAMJI SHANJA.

[20 Bom. 116

MAHOMEDAN LAW—PRE-EMPTION.

		Col.
1.	Right of Pre-emption	... 801
	(*a*) Generally	... 801
	(*b*) Co-sharers	... 802
	(*c*) Waiver of Right, or Refusal to Purchase	... 803
2.	Ceremonies	... 803

See CASES UNDER PRE-EMPTION.

(1) RIGHT OF PRE-EMPTION.

(*a*) GENERALLY.

1.—*Claim for pre-emption based upon a transaction which was a good sale under the Mahomedan law, but not under the Transfer of Property Act (IV of 1882), s. 54—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37.*] Where a Sunni Mahomedan transferred certain immoveable property exceeding in value Rs. 100, under such circumstances that the price was paid and possession of the property delivered to the transferee, but no sale-deed was executed; on a suit for pre-emption based upon such transfer being brought, it was *held* by the Full Bench (BANERJI, J., dissenting) that the Mahomedan law was to be applied in considering whether

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

(1) RIGHT OF PRE-EMPTION—*continued.*

(*a*) GENERALLY—*concluded.*

or not a right of pre-emption arose, and that, inasmuch as the transaction in question was a complete sale under that law, a right of pre-emption did arise. Case law prior and subsequent to Act IV of 1882, considered. *Per* BANERJI, J., *contra*—"In the absence of fraud no claim for pre-emption under the Mahomedan law applicable to persons of the Hanifa sect can arise in respect of the sale of immoveable property of the value of one hundred rupees and upwards, unless such sale has been effected according to the provision of s. 54 of Act IV of 1882." BEGAM *v.* MUHAMMAD YAKUB.

[16 All. 344

2.—*Rights of third persons having a claim to pre-emption where the vendee is also a person who would have a similar claim were the sale to a stranger.*] Under the Mahomedan law, even when the buyer is himself a pre-emptor, that is, a person who would have the right of pre-emption against an outsider, other persons having a similar right of pre-emption are entitled to claim pre-emption against the buyer; and, in such a case, the rights of the claimants to pre-emption should be determined in the same way in which they would have been determined had the buyer acquired the property by enforcing his right of pre-emption against a stranger, in the absence of the other pre-emptors, and the absenteee pre-emptors had appeared subsequently and claimed pre-emption. *Moheshee Lal* v. *Christian*, 6 W. R. 250; *Teeka Dharee Singh* v. *Mohur Singh*, 7 W. R. 260; *Lalla Nowbut Lall* v. *Lalla Jewan Lal*, I. L. R. 4 Calc. 831, dissented from. In cases of pre-emption to which the Mahomedan law applies the rules of that law are to be administered in their entirety where they are not inconsistent with the principles of justice, equity and good conscience. *Chundo* v. *Hakeem Alim-ood-deen*, 6 N. W. 28; and *Gobind Dayal* v. *Inyat-ullah*, I. L. R. 7 All. 775, referred to. A person entitled to a right of pre-emption is not bound to claim pre-emption in respect of all the sales which may be executed in regard to the property, although every suit for pre-emption must include the whole of the property subject to pre-emption conveyed by one transfer. *Kashi Nath* v. *Mukhta Prasad*, I. L. R. 6 All. 370, referred to. AMIR HASAN *v.* RAHIM BAKHSH.

[19 All. 466

(*b*) CO-SHARERS.

3.—*Shafi-i-khalit—Nature of pre-emptive right arising by common enjoyment of rights appended to property.*] In order that two persons may become *shafi-i-khalits*, or persons having a right of pre-emption in virtue of the common enjoyment of, *e.g.*, a road, it is necessary that such road should be a private road and not a thoroughfare. Among persons who are *shafi-i-khalits* by reason of being sharers in a right of way, all those who are sharers in such right of way have equal rights

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

(1) RIGHT OF PRE-EMPTION—*concluded.*

(*b*) CO-SHARERS—*concluded.*

of pre-emption, although one of them may be a contiguous neighbour. KARIM BAKHSH *v.* KHUDA BAKHSH.

[16 All. 247

(*c*) WAIVER OF RIGHT OR REFUSAL TO PURCHASE.

4.—*Effect of offer by pre-emptor to purchase from vendee.*] *Held*, that, where a pre-emptor continues to assert his pre-emptive right, and on the strength of that right and in his character of pre-emptor offers to take the property from the purchaser by paying him the sale price, without resorting to, and with a view to avoid litigation, he cannot be said to have acquiesced in the sale and waived his right of pre-emption. *Muhammad Nasiruddin* v. *Abul Hasan*, I. L. R. 16 All. 300, followed; *Habibunnissa* v. *Abdul Rahim*, I. L. R. 8 All. 275, referred to. MUHAMMAD YUNUS KHAN *v.* MUHAMMAD YUSUF.

[19 All. 334

MUHAMMAD NASIRUDDIN *v.* ABUL HASAN.

[16 All. 300

(2) CEREMONIES.

5.—*Talab-i-ishtishhâd—Talab-i-mawasibat.*] In making *talab-i-ishtishhâd* under the Mahomedan law it is essential to the validity of that proceeding that the person making the demand should in some form or another distinctly state that he had prior thereto made what is known as the immediate demand (*talab-i-mawasibat*). *Rujjub Ali Chopedar* v. *Chundi Churn Badra*, I. L. R. 17 Calc. 543, referred to. AKBAR HUSAIN *v.* ABDUL JALIL.

[16 All. 383

6.—*Talab-i-ishtishhâd—Demand made "on the premises"—Demand made within an undivided village a share in which was the subject of sale.*] Where certain persons claimed pre-emption in respect of a share in an undivided village and proved that they made an immediate assertion of their intention to pre-empt in the presence of witnesses within the area of the zemindari to which the share sold belonged, it was *held* that, in the absence of any indication that the demand was not made *bonâ fide*, the demand of pre-emption was a good demand made "on the premises" within the meaning of the Mahomedan law. KULSUM BIBI *v.* FAQIR MUHAMMAD KHAN.

[18 All. 298

7.—*Talab-i-ishtishhâd—Demand made to vendee not in possession—Demand made by agent of pre-emptor.*] *Held*, that if the *talab-i-istishhâd* is made in the presence of the vendee, it is not necessary that such vendee should at the time the demand is made be actually in possession of the property in respect of which pre-emption is claimed. *Chamroo Pasban* v. *Pahlwan Roy*, 16 W. R. 3, explained. *Jhotee Singh* v. *Komul Roy*, 10 W. R. 119; *Janger Mohamed* v. *Mohamed Arjad*, I. L. R. 5 Calc. 509; *Gola Ram Deb* v. *Brindaban Deb*, 6 B. L. R. 165; 14 W. R. 265; and *Dayemoollah* v. *Kirtee Chunder Surmah*, 18 W. R. 530, referred to:—*Held*, also, that the ceremony of *talab-i-ishtishhâd* need not necessarily be performed by the claimant for pre-emption in person, but may be performed by a duly constituted agent on his behalf. *Wajid Ali Khan* v. *Lalla Hanuman Prasad*, 4 B. L. R. A. C. 139; and *Ojheoonissa Begum* v. *Rustum Ali*, W. R. (1864) 219, referred to. ALI MUHAMMAD KHAN *v.* MUHAMMAD SAID HUSAIN.

[18 All. 309

MAHOMEDAN LAW—PRE-EMPTION —*concluded.*

(2) CEREMONIES—*concluded.*

8.—*Talab-i-ishtishhâd—Witnesses—Servants of pre-emptor.*] In the making of the *talab-i-ishtishhâd* the servants of the pre-emptor are competent witnesses. The disability in this respect imposed by the Mahomedan law is limited to minors and persons convicted of slander. MUHAMMAD YUNUS KHAN *v.* MUHAMMAD YUSUF.

[19 All. 334

MAHOMEDAN LAW—SALE.

See MAHOMEDAN LAW—MORTGAGE.

[20 Bom. 116

MAHOMEDAN LAW—WILL.

See PARTIES—PARTIES TO SUIT—EXECUTORS.

[19 Bom. 83

See RECEIVER.

[19 Bom. 83

—*Administration of the estate of a Shia Mahomedan under his will—Alleged gift—Claims as between his childless widow and the estate—Right of childless widow to maintenance—Legacies chargeable on one-third only of the estate—Commission to executor.*] A Mahomedan of the Shia sect, dying without issue, left a widow. She as his childless widow was entitled to one-fourth of his estate other than land. In the administration of his estate the following matters arose and were decided:—The handing over, with formal words of gift by the testator to the widow, of deposit receipts, with intent afterwards to transfer the money into her name at the bank, which transfer was not effected, would not constitute a gift. A commission of three per cent. on the proceeds of the sale of the testator's property, directed by his will, was bequeathed to the executor. This was by way of remuneration, but was in no sense a debt. As a legacy it was payable only out of one-third of the estate which passed by the will. A Mahomedan widow is not entitled to maintenance out of the estate of her late husband, in addition to what she is entitled to by inheritance, or under his will—Hedaya, Book IV, Chap. 15, s. 3, Mahomedan law, Imamia, by N. E. Baillie, p. 170, referred to. No contract could be implied that this widow should pay an occupation rent on account of her *having conti-*

MAHOMEDAN LAW—WILL—*concluded.*

sued to occupy a house belonging to the testator's estate, for eleven months after his death. Her occupation was referable to her position, and no notice was given to her that rent would be charged. A Mahomedan childless widow is not by Shia law entitled to share in the value of land forming the site of buildings that belonged to her husband's estate. Her one-fourth includes, as was admitted, a share in the proceeds of sale of the buildings. The text quoted in Book VII, Chap. IV, p. 293 of Baillie's Mahomedan Law, Imamia, is not to be construed as referring only to agricultural land. AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE; KOOLSOM BIBEE *v.* AGA MAHOMED JAFFER BINDANIM.

[25 Calc. 9

[L. R. 24 I. A. 196

MAINTENANCE.

See CASES UNDER DECREE—FORM OF DECREE—MAINTENANCE.

See EXECUTION OF DECREE—MODE OF EXECUTION—MAINTENANCE.

[16 All. 179

See CASES UNDER HINDU LAW—MAINTENANCE.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[21 Calc. 683

See HUSBAND AND WIFE.

[21 Bom. 77

See LUNATIC.

[23 Calc. 512

See MAHOMEDAN LAW—WILL.

[25 Calc. 9

[L. R. 24 I. A. 196

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MAINTENANCE.

[20 Mad. 29

——, Arrears of, Suit for.

See LIMITATION ACT, ART. 116.

[23 Calc. 645

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MAINTENANCE.

[20 Mad. 29

See VALUATION OF SUIT—APPEALS.

[23 Calc. 645

——, Charge for, in decree.

See TRANSFER OF PROPERTY ACT, S. 67.

[22 Calc. 903

——, Claim for.

See PLEADER—REMUNERATION.

[21 Bom. 42

MAINTENANCE—*concluded.*

——, Execution of decree contingent on non-payment of.

See LIMITATION ACT, ART. 178.

[16 All. 237

——, Execution of decree for.

See LIMITATION ACT, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.

[18 Mad. 482

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.

[18 Mad. 482

——, Future, Attachment of.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[16 All. 443

——, Suit for.

See LIS PENDENS.

[19 Mad. 271

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

[18 All. 107

1.—*Jurisdiction — Criminal Procedure Code* (1882), *ss.* 488 *and* 177—*Complaint by a wife against her husband for maintenance—Issue of summons—Jurisdiction of Presidency Magistrate.*] If a person neglects or refuses to maintain his wife, the proper Court to take cognizance of the complaint of the wife is the Court within the jurisdiction of which the husband resides. BENBOW *v.* BENBOW.

[24 Calc. 638

2.—*Criminal Procedure Code* (1882), *s.* 488—*Illegitimate children—Right of a married woman to claim maintenance for her illegitimate children.*] A married woman is entitled under s. 488 of the Code of Criminal Procedure (Act X of 1882) to claim maintenance for her illegitimate children from the putative father. ROZARIO *v.* INGLES.

[18 Bom. 468

3.—*Criminal Procedure Code* (1882), *s.* 488—*Maintenance and custody of children—Moplahs—Personal law.*] The right of children to be maintained by their actual father is a statutory right, and the duty is created by express enactment independent of the personal law of the parties. If the children are illegitimate, the refusal of the mother to surrender them to the father is no ground for refusing maintenance. If the children are legitimate, the question of the mother's right to their custody would depend on the question whether the parties are governed by Mahomedan or Marumakkatayam law; because (1) if they are governed by Mahomedan law, the mother may have the right to custody until the

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

children attain the age of seven years; (2) if by the Marumakkatayam law, it is doubtful if the father could be held to have neglected his duty to maintain his children if they were actually maintained by the *karnavan* of their mother's *tarwad* who is bound by law to maintain them. KARIYADAN POKKAR *v.* KAYAT BEERAN KUTTI.

[19 Mad. 461

4.—*Criminal Procedure Code* (1882), *s.* 488—"*Adultery*"—*Penal Code* (*Act XLV of* 1860), *s.* 497—*Refusal of wife to live with husband*—*Criminal Procedure Code, s.* 4.] A wife petitioned for maintenance for herself and child against her husband under s. 488 of the Criminal Procedure Code. The husband did not refuse to maintain his wife, but the petitioner refused to live with him as he kept a concubine:—*Held*, that the word "adultery" in s. 488 of the Criminal Procedure Code must, by virtue of s. 4 of the Code, be construed with reference to the definition of the term in s. 497 of the Penal Code. Consequently a husband's immorality which does not amount to "adultery" or involve the degradation of a married woman being brought into the society of a concubine is not sufficient ground for a wife's refusal to live with her husband. An offer to maintain a wife must be an offer to maintain with the consideration due to her position as a wife. *Marakkal* v. *Kandappa*, I. L. R. 6 Mad. 371, cited. *Per* BEST, J.—It is very doubtful if the framers of s. 488 of the Code of Criminal Procedure intended the word "adultery" as used therein to have the limited meaning given to it in the Penal Code. The wrong done to the wife is in no way affected by the circumstance of her husband's concubine being married or unmarried, or, in case of her being married, whether it is with or without her husband's consent or collusion that she is living in such concubinage. In face, however, of s. 4 of the Criminal Procedure Code, no other interpretation of the term "adultery" is possible than the limited interpretation contained in the Penal Code. QUEEN-EMPRESS *v.* MANNATHA ACHARI.

[17 Mad. 260

5.—*Criminal Procedure Code* (1882), *s.* 488 *and s.* 4—*Adultery.*] Adultery on the part of the husband, not being such adultery as would be punishable under the Penal Code, may nevertheless constitute sufficient cause for the wife separating from her husband, and enable her to claim maintenance under the Criminal Procedure Code, s. 488. *Queen-Empress* v. *Mametta Achari*, I. L. R. 17 Mad. 260, dissented from. GANTAPALLI APPALAMMA *v.* GANTAPALLI YELLAYYA; PERIANAYAGAM *v.* KRISHNA CHETTI.

[20 Mad. 470

6.—*Criminal Procedure Code* (1882), *s.* 488—*Breach of order for monthly allowance—Imprisonment for default of payment of maintenance—Sentence absolute—Husband and wife.*] A wife, who had obtained an order for maintenance against her husband on the 1st August, applied to have it enforced with respect to three months then in arrears. A distress warrant having issued without anything being realised, the husband was brought up under a warrant for his arrest. The husband previous to his arrest petitioned the Court to be allowed to prove his altered circumstances and his inability to pay. On that petition an order was passed that he could produce the evidence after the amount due was paid. On being brought up, and not paying the amount due, an order was made committing him for one month under s. 488 of the Code of Criminal Procedure. The day following his commitment his brother tendered the money and asked for his release. The Magistrate took the money, but refused to order the release, holding that under the section the punishment of imprisonment was absolute and not dependent on payment of the maintenance allowance. The husband moved the High Court, contending (1) that the order of imprisonment should not have been passed without an opportunity being given him of proving the change in his circumstances which would show that the order to pay required modification; (2) that the section did not authorise imprisonment unless wilful neglect to comply with the order be proved; and (3) that the imprisonment authorised by the section being only a mode of enforcing payment he should have been released on the amount being paid:—*Held*, that the first ground was untenable, inasmuch as the order for maintenance carries with it all its proper consequences as long as it remains in force:—*Held*, also, that before an order for imprisonment under the section can be passed, it must be proved that the non-payment of the maintenance is the result of wilful negligence, and that there being no evidence of that in the case the order was bad:—*Held*, further, that the imprisonment which can be awarded under the section is not a punishment for contempt of the Court's order, but merely a means of enforcing payment of the amount due, and that upon the payment of that amount being made the husband was entitled to be released. *Biyacha* v. *Moidin Kutti*, I. L. R. 8 Mad. 70, dissented from. SIDHESWAR TEOR *v.* GYANADA DASI.

[22 Calc. 291

7.—*Criminal Procedure Code* (1882), *s.* 488—*Sentence of imprisonment in default of payment.*] The imprisonment provided by s. 488, Criminal Procedure Code, in default of payment of maintenance awarded, is not limited to one month. The maximum imprisonment that can be imposed is one month for each month's arrear, and if there is a balance representing the arrear for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear. *Biyacha* v. *Moiden Kutti*, I. L. R. 8 Mad. 70, approved of. ALLAPICHAI RAVUTHAR *v.* MOHIDIN BIBI.

[20 Mad. 3

See BIKHU KHAN *v.* ZAHURAN.

[25 Calc. 291

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*concluded.*

8.—*Criminal Procedure Code* (1882), *s.* 488—*Order for maintenance of wife, Effect on, of declaratory decree of Civil Court.*] An order for the maintenance of a wife duly made under s. 488 of the Code of Criminal Procedure cannot be superseded by a declaratory decree of a Civil Court to the effect that the wife in whose favour such order has been made has no right to maintenance. *Subad Domni* v. *Katiram Dome*, 20 W. R. Cr. referred to. SUBHUDRA *v.* BASDEO DUBE.

[18 All. 29

9.— *Criminal Procedure Code* (1882), *ss.* 488, 489 *and* 490—*Plea of divorce in answer to an application for enforcement of an order for maintenance of a wife.*] Where, in answer to an application for enforcement of an order under s. 488 of the Code of Criminal Procedure for the maintenance of a wife, the party against whom such order is subsisting pleads that he has lawfully divorced his wife, and therefore the order can no longer be enforced, it is the duty of the Court hearing the application to entertain and consider such plea, and if it find the plea established, to decline to enforce the order for any period subsequent to the date when the marriage ceased to subsist between the parties. In such case, where the parties are Mahomedans, the marriage will be deemed to subsist until the expiration of the *iddat*. In s. 489 of the Code the "change in circumstances" referred to is a change in the pecuniary or other circumstances of the party paying or receiving the allowance which would justify an increase or decrease of the amount of the monthly payment originally fixed, and not a change in the status of the parties which would entail a stoppage of the allowance. So, *held* by AIKMAN and BLENNERHASETT, JJ. (*dissentiente* KNOX, J.) *In the Matter of the Petition of Din Muhammad*, I. L. R. 5 All. 226; *Abdur Rohoman* v. *Sakhina*, I. L. R. 5 Calc. 558; *Zeb-un-nissa* v. *Mendu Khan*, Weekly Notes, All. (1885) 29; *In re Kasam Pirbhai*, 8 Bom. 95; *In re Abdul Ali Ismailji*, I. L. R. 7 Bom. 180; *Mahomed Abid Ali Kumar Kadur* v. *Ludden Sahiba*, I. L. R. 14 Calc. 276; and *Baji* v. *Nawab Khan*, 29 Panj, Rec. 69, referred to. *Nepoor Aurut* v. *Jurai*. 10 B. L. R. Ap. 33, dissented from. *Mahbuban* v. *Fakir Bakhsh*, I. L. R. 15 All. 143, overruled. ABU ILYAS *v.* ULFAT BIBI.

[19 All. 50

MAJORITY.

——, Age of.

See GUARDIAN—APPOINTMENT.

[18 Bom. 366

See PARSI MARRIAGE AND DIVORCE ACT, S. 30.

[18 Bom. 366

MAJORITY ACT (IX OF 1875).

——, s. 3.

See LETTERS OF ADMINISTRATION.

[21 Calc. 911

MAJORITY ACT (IX OF 1875)—*concld.*

——, s. 3.—*Minority, Period of, where guardian has once been appointed although no longer in existence—Guardians and Wards Act (VIII of* 1890), *s.* 52—*Suit on promissory note executed by minor.*] The defendant was sued upon a promissory note executed by him on the 24th August, 1892, he being at that time 19 years of age. Eight years previously, *viz.*, on the 4th March, 1884, a guardian of his person and property had been appointed by an order of the High Court, but the guardian had been discharged on the 25th June, 1892, and at the time of the execution of the note sued on there was no guardian in existence either of his person or property:—*Held*, that having regard to the provisions of s. 3 of the Indian Majority Act, (IX of 1875), the defendant was still a minor at the date of the note. GORDHANDAS JADOWJI *v.* HARIVALUBHDAS BHAIDAS.

[21 Bom. 281

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MADRAS ACT I OF 1887).

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[18 Mad. 407
[19 Mad. 384
[20 Mad. 435

MALABAR LAW—ADOPTION.

—Adoption by the karnavan of a Marumakkatayam tarwad—Want of consent by the rest of the tarwad.] A *tarwad* in Malabar subject to Marumakkatayam law was reduced in number to two persons, *viz.*, the *karnavan* and his younger brother, the plaintiff. They quarrelled, and the former without the consent of the latter adopted as members of the *tarwad* his son and daughter and her children. On his death the plaintiff sued for possession of the *tarwad* property and for a declaration that the adoptions were invalid:—*Held*, that the plaintiff was entitled to the relief asked for. PAYYATH NANU MENON *v.* THIRUTHIPALLI RAMAN MENON.

[20 Mad. 51

MALABAR LAW—ENDOWMENT.

—Uraiyama or rights of uralan—Trustees and guardian of a temple in Malabar — Melkoima, or right of superintendence inherited by a family —Usage of the temple—Effect of compromise.] The appellants, who were *uralan*, managing as trustees and guardians the affairs of a temple in South Malabar, claimed to exclude the respondents from the management jointly with themselves. The respondents, representing the Nambidi family, the descendants of the former rulers of the locality, were entitled to rights termed *melkoima*, of superintendence over the temple. Disputes having arisen, the predecessors of the parties in 1845, and again in 1874, had compromised litigation, and had agreed, with the result that they had since then continued to act upon

MALABAR LAW — ENDOWMENT — *concluded.*

the agreement that they should jointly exercise the powers of management:—*Held*, that the compromise so agreed to was binding upon the appellants; that the usage, which had been followed since 1845, was the best exponent of the *melkoima* right; and that the compromise could not be re-opened. NILAKANDHEN NAMBUDIRAPAD *v.* PADMANABHA REVI VARMA.

[18 Mad. 1
[L. R. 21 I. A. 128

Affirming, on appeal, decision of High Court in NILAKANDHEN *v.* PADMANABDA.

[14 Mad. 153

MALABAR LAW—INHERITANCE.

1.—*Makkatayam rule of inheritance—Tiyans of South Malabar.*] On the death of a Tiyan of South Malabar, following the Makkatayam rule of inheritance, his mother, widow and daughter are entitled to succeed to his property (acquired by himself and his father) in preference to his father's divided brothers. IMBICHI KANDAN *v.* IMBICHI PENNU.

[19 Mad. 1

2.—*Makkatayam law—Thiyyas of Calicut—Widow—Mother.*] Among the Thiyyas of Calicut governed by the Makkatayam law, the widow of the deceased owner is a preferential heir to his mother. KUNHI PENNU *v.* CHIRUDA.

[19 Mad. 440

MALABAR LAW—JOINT FAMILY.

1.—*Compromise of doubtful claims by adult members of a tarwad—Minors, Effect of compromise on.*] *Semble:* That a compromise of a doubtful claim made by the adult members of a *tarwad bonâ fide* and in the interest of the *tarwad* is binding on the minor members. MOIDIN KUTTI *v.* BEEVI KUTTI UMMAH.

[18 Mad. 38

2.—*Decree against karnavan on tarwad debt before partition—Execution after partition against property of person not party to execution proceedings—Joint decree executed against separate property.*] The *karnavan* of a Malabar *tarwad* borrowed money for purposes which rendered the debt binding on the *tarwad*. The creditor obtained a decree against the *karnavan* in 1879. In 1882 a partition of the *tarwad* property took place. In 1891 property which had fallen on partition to the present plaintiff's share was attached and brought to sale in execution of the decree of 1879. He was not joined as a party in the execution proceedings:—*Held*, that the Court-sale did not bind the plaintiff. *Sanhara* v. *Kelu*, I. L. R. 14 Mad. 29, referred to. KUNHAPPA NAMBIAR *v.* SHRIDEVI KETTILAMMA.

[18 Mad. 451

3.—*Decree against karnavan on tarwad debt before partition—Execution after partition—Joint decree executed against separate property.*] In a

MALABAR LAW—JOINT FAMILY— *continued.*

suit for declaration that certain land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the decree was passed against the judgment-debtor as *karnavan* of a Malabar *tarwad*, and that it was for a debt incurred for purposes binding on the *tarwad*. In 1882 a partition had been come to between the members of the *tarwad* under which the property in suit had been allotted to the plaintiff:—*Held*, that the state of things when the debt was contracted must be looked to, and at that time the *karnavan* was competent to bind all the members of the *tarwad*. Any subsequent arrangement in the family could not affect their obligation to the creditor who was not a party to it. The plaintiff's property therefore was liable notwithstanding the partition. KRISHNAN NAMBIAR *v.* KRISHNAN NAIR.

[18 Mad. 452 note

4.—*Decree against karnavan binding on tarwad—Parties.*] A decree in a suit in which the *karnavan* of a Nambudri *illom* or a Marumakkatayam *tarwad* is, in his representative capacity, joined as a defendant, and which he honestly defends, is binding on the other members of the family not actually made parties. VASUDEVAN *v.* SANKARAN.

[20 Mad. 129

5.—*Mapillas.*] The *karnavan* of a *tarwad* in Malabar sued to recover property acquired by his sister (deceased) and now in the occupation of the defendants, her children. The parties were Mapillas. The defendants pleaded (1) that the property had been given to them and their mother jointly; (2) that their mother was not governed by Marumakkatayam law. The Court of first instance found the first-mentioned plea to be good and dismissed the suit, and also found that the family was governed by Marumakkatayam law. The Court of first appeal dissented from the above finding as to the first plea, and, without deciding the second point, remanded the case for the trial of a general issue as to the mode of devolution of self-acquired property in Marumakkatayam Mapilla families in North Malabar; and ultimately it dismissed the suit, ruling that in Marumakkatayam Mapilla families the self-acquired property of a female descends to her children, and does not lapse on her death to her *tarwad*: *Quære*: Whether that decision was a correct one. Observations as to the law applicable to Mapillas. ILLIKKA PAKRAMAR *v.* KUTTI KUNHAMED.

[17 Mad. 69

6.—*Karnavan—Effect of decree against karnavan representing the tarwad—Res judicata—Civil Procedure Code* (1882), *ss.* 13 *and* 30.] Although the members of a *tarwad* or family may, in an irregular fashion, be represented by a *karnavan* of the *tarwad* in a suit, the decree therein does not raise an absolute estopped against members not actually brought on the record. *Ittiachan* v. *Vellappan*, I. L. R. 8 Mad. 484; and *Sri Devi* v. *Kelu Eradi*, I. L. R. 10 Mad.

MALABAR LAW—JOINT FAMILY—*concluded.*

79, followed. KOMAPPAN NAMBIAR *v.* UKKARAN NAMBIAR.

[17 Mad. 214

MALABAR LAW—MORTGAGE.

1.—*Kanom mortgage—Right of a jenmi, who is a judgment-creditor, to sell the kanom right before the expiry of twelve years.*] A *jenmi*, who has obtained a decree for arrears of rent, may sell the *kanom* before the expiry of twelve years; such a sale does not put an end to the *kanom*, but only transfers the *kanomdar's* interest to the purchaser at the execution sale. ACHUTAN NAYAR *v.* KESHAVAN.

[17 Mad. 271

2.—*Malabar kanom—Redemption, Value of improvements on—Depreciation of, between decree and date of redemption.*] A decree for the redemption of a *kanom* in Malabar was passed in December, 1894, when there were on the land improvements in the form of trees, &c., to the value of Rs. 1,429. Within the six months limited by the decree for redemption the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees to the value of Rs. 157. The loss was the result of want of water, and was not attributable to neglect on the part of the mortgagee:—*Held*, that the loss should fall on the mortgagee. KRISHNA PATTER *v.* SRINIVASA PATTER.

[20 Mad. 124

MALABAR LAW—PARTITION.

See MALABAR LAW—JOINT FAMILY.

[18 Mad. 451, 452 note

See SALE IN EXECUTION OF DECREE—INVALID SALES—EXECUTION AGAINST PROPERTY NOT COVERED BY DECREE.

[18 Mad. 451, 452 note

—*Makkatayyam rule of inheritance—Tiyans' custom—Compulsory partition.*] The ordinary rule of Marumakkatayam against compulsory partition is equally applicable to Tiyans who follow Makkatayam, no custom to the contrary having been made out. RAMAN MENON *v.* CHATHUNNI.

[17 Mad. 184

MALICIOUS PROSECUTION.

See ONUS OF PROOF—DAMAGES.

[19 Bom. 717

1.—*Prosecution by a Police constable in private as well as official capacity—Malice—Suit for damages.*] A Police constable, who is in effect the prosecutor and not acting merely in his official capacity, who does not take reasonable care to inform himself of the truth of the case, and who does not honestly believe in the charge preferred by him, and is actuated by an indirect

MALICIOUS PROSECUTION—*continued.*

motive in preferring it, is liable in a suit for damages for malicious prosecution. MINAKSHISUNDRUM PILLAI *v.* AYYATHORAI.

[18 Mad. 136

2.—*Procuring wrongful execution of a warrant of arrest—Reasonable and probable cause.*] The plaintiff sued the Municipal Commissioner of Bombay for damages, alleging that the Commissioner had maliciously and without reasonable and probable cause procured a warrant to be issued against him on the 24th March, 1892, and subsequently procured that warrant to be executed at a time when its force was spent, and under circumstances when it ought not to have been executed. From the evidence it appeared that, on the 21st December, 1891, a notice was served on the plaintiff under s. 232 of the City of Bombay Municipal Act (III of 1888) requiring him to do certain drainage work upon premises belonging to him. The work not having been done, a summons was issued against him on the 11th February, 1892, requiring him to appear before the Presidency Magistrate to answer a charge of not having complied with the above notice. The summons was returnable on the 25th February, 1892, and on that day the plaintiff appeared, but the hearing was postponed until the 24th March, 1892. On the 27th February, 1892, the plaintiff wrote to the defendant objecting to the nature of the work he was required to do, and adding "after this explanation I will leave the matter in the hands of the Drainage Department to do the work, and will pay the expenses." In reply to this letter the Executive Engineer on the 21st March informed the plaintiff that he must appear in Court on the 24th March, and also requested him to "take the work in hand at once and complete it within the time now allowed." On the 22nd March, 1892, the plaintiff replied by letter stating that he did not understand the work, and asking the Municipality to get it done, he offering to pay the expense. The letter ended as follows:—"I do not see any reason now to attend in Police Court on the 24th instant, as I am ready and willing to do the work." The plaintiff did not attend the Court on the 24th March. On that same day (the 24th) a letter signed by the Municipal Commissioner was delivered to the plaintiff, dated the 23rd March, informing him that a "fresh summons" had been issued against him for not complying with the requirements of the notice served on him. The Courts held that the non-appearance of the plaintiff on the 24th March was not caused by the receipt of this letter. On the 24th *idem*, in consequence of the non-appearance of the plaintiff in obedience to the summons, a warrant of arrest was issued against him. The date originally inserted in the warrant for the plaintiff's appearance before the Magistrate was the 7th April, but this date was subsequently altered to the 2nd June. There was no evidence as to how or by whom this alteration was made. The plaintiff having heard on the 25th March of the issue of the warrant appeared next day (the 26th) before the Magistrate and surrendered, showing

MALICIOUS PROSECUTION—*continued.*

to the Magistrate the defendant's letter of the 23rd March and explaining why he had not attended on the 24th. A note was made of his surrender, and he was told by the Magistrate to appear on the 7th April. The plaintiff, however, did not get the warrant cancelled. He stated that at the office of the Presidency Magistrate's Court he was informed that the warrant was with the Municipality, and that he then went away and did nothing more. On the 7th April the Municipal Engineer went to the plaintiff's premises and pointed out the work that was to be done. He (the plaintiff alleged) told the plaintiff that he need not attend the Police Court that day, as he would get the hearing of the summons postponed for a fortnight. The plaintiff then instructed a plumber to do the requisite work, which was completed (as plaintiff alleged) on the 26th April, and was passed and approved by the municipal authorities. The plaintiff swore that he attended the Police Court on the 21st April, but apparently did not bring his appearance to the notice of the Magistrate, as the municipal officers had left the Court before he arrived. He further stated that he attended again on the 28th April, but was told by a municipal inspector that he might go away, as the work was done. Another hearing was apparently fixed on the 19th May, but the case was again adjourned to the 2nd June. On the 31st May the plaintiff was arrested in execution of the warrant of the 24th March. The evidence was that on that morning, at 8 o'clock, a municipal inspector *H*, who was not called as a witness at the hearing, accompanied by a Police sepoy, went to the plaintiff's house and pointed out the plaintiff to the sepoy who arrested him and took him in custody to the Police-station and subsequently before the Magistrate. He was released on depositing Rs. 25 as security for appearing when required. On the 16th June the plaintiff again appeared in the Police Court when the summons was withdrawn. The plaintiff claimed Rs. 10,000 as damages for malicious prosecution, wrongful arrest, and detention in custody and false imprisonment. The defendant denied that he had applied for or obtained the warrant for the plaintiff's arrest, or that he or his servants had anything to do with the arrest or was responsible for it, save that a sub-inspector who knew nothing of the warrant had pointed out the plaintiff to a Police-officer at the latter's request. He further denied that the proceedings were malicious and without reasonable and probable cause. The lower Court (STARLING, J.) held that the defendant was liable for the wrongful execution of the warrant against the plaintiff and awarded the latter Rs. 500. On appeal:—*Held* (affirming the decree of the lower Court), that the defendant was liable. On the 28th April at any rate the warrant in question was a spent warrant and could not be properly executed, as it was, on the 31st May. As the warrant was issued by the Magistrate of his own accord, the defendant could not be liable for its execution (as shown by the case of *West* v. *Smallwood*, 3 M. & W. 418), unless he or his subordinates took an active part in executing it. The mere circumstance that the plaintiff was pointed out to the Police-officer who executed the warrant by a municipal inspector might not of itself amount to taking an active part. But there were special circumstances which should be taken into consideration in conjunction with it. The length of time which elapsed before the warrant was executed, and the alteration of the date in the direction contained in the warrant as to taking bail, not explained in any way, and which could not have been made by the Police, pointed to the warrant having been, if not in the actual keeping of the municipal authorities, at any rate under their control, and to the Police having been set in motion by them. Under these circumstances it was incumbent on the defendant to give rebutting evidence, and more especially to call the municipal inspector to explain the circumstances under which he pointed out the plaintiff to the Police-officer who executed the warrant. ACWORTH *v.* SHAVAKSHA DHUNJIBHAI.

[19 Bom. 485

MALICIOUS PROSECUTION—*concluded.*

"MALIK," MEANING OF.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[24 Calc. 406, 834
[L. R. 24 I. A. 76

MAMLATDAR.

See CASES UNDER MAMLATDARS COURTS ACT.

——, Disqualification of, to try case.

See JUDGE.

[19 Bom. 608

——, Order of, Effect of.

See LIMITATION ACT, ART. 47.

[18 Bom. 348
[20 Bom. 270

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Bom. 348

See POSSESSION—EVIDENCE OF TITLE.

[20 Bom. 270

MAMLATDAR, JURISDICTION OF.

See LIMITATION ACT, S. 14.

[18 Bom. 734

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[20 Bom. 630
[21 Bom. 731, 775

1.—*Mamlatdars Courts Act* (*Bombay Act III of* 1876), *ss.* 15. *cl.* (*a*), *sub-clauses* (1) *and* (2), *and* 18—*Execution of decree for possession against a third party—Superintendence of High Court.*] A third party cannot be ousted from posses-

MAMLATDAR, JURISDICTION OF—*continued.*

sion of property in the execution of a decree for possession made by a Mamlatdar against a defendant under Bombay Act III of 1876, and it is beyond the power of Government by Resolution to give a Mamlatdar authority to oust a third party. *A* obtained an order in a Mamlatdar's Court against *G*, for possession of a house, and in execution *N*, who was found in possession of the house, and who was reported by the village officers as holding possession for *G*, was evicted by order of the Mamlatdar. *N* then applied to the High Court:—*Held*, that the Mamlatdar's order was, strictly speaking, beyond his authority, but that as *N's* petition to the High Court contained no distinct denial that he was occupying merely on behalf of the defendant, the High Court would not interfere in its extraordinary jurisdiction. NATHEKHA *v.* ABDUL ALLI.

[18 Bom. 449

2.—*Mamlatdars Courts Act (Bombay Act III of 1876), s. 15—Possessory suit—Possession of mortgagee.*] The possession by a mortgagee is not possession on behalf of his mortgagor within the meaning of s. 15 of the Mamlatdars Act (Bombay Act III of 1876) so as to give the Mamlatdar jurisdiction under that section. KHANDERAO *v.* NARSINGRAO.

[19 Bom. 289

3.—*Mamlatdars Courts Act (Bombay Act III of 1876), s. 15—Landlord and tenant—Dispossession of tenant—Possessory suit by landlord—Nature of possession — Constructive possession.*] A landlord who has let out his land to tenants cannot, on the tenants being dispossessed, bring a possessory suit in the Mamlatdars Court under the provisions of the Mamlatdars Act (Bombay Act III of 1876). The tenants cannot be said to be in possession "on behalf" of the landlord under s. 15, cl. (*a*) of the Act, and the Mamlatdar has therefore no jurisdiction to try the suit. GOMA *v.* NARSINGRAO.

[20 Bom. 260

See BHIMAJI JAYAJI PATEL *v.* GOPALA MAHADU SALE.

[20 Bom. 264 note

4.—*Dispossession of a third person not a party in execution of decree for possession—Possessory suit by third person against decree-holder—Cause of action—Mamlatdars Courts Act (Bombay Act (III of 1876)—Mamlatdar—Civil Procedure Code 1882), s. 332.*] Where in execution of a decree a person not a party to the suit is dispossessed, his dispossession does not give him a cause of action within the jurisdiction of the Mamlatdar. Section 332 of the Civil Procedure Code (Act XIV of 1882) applies. RAMCHANDRA SUBRAO *v.* RAVJI.

[20 Bom. 351

5.—*Delivery of possession in execution of a decree of a Civil Court—Subsequent lease to the judgment-debtor — Refusal of the Mamlatdar to restore possession after the expiration of the lease—*

MAMLATDAR, JURISDICTION OF—*continued.*

Suit for possession—Cause of action.] *V* obtained possession of land from *B* in execution of a decree of a Civil Court. After obtaining possession, *V* leased the land to *B*. On *B's* refusal to vacate the land on the expiration of the lease, *V* brought a possessory suit in the Mamlatdar's Court. The Mamlatdar rejected the plaint, holding that he ought not to order restoration of possession of the land again and again:—*Held*, that a fresh cause of action accrued to *V* on the refusal of *B* to give possession on the expiry of the lease, and that the Mamlatdar was wrong in declining to accept the plaint. VINAYAK VISHWANATH BHOPLE *v.* BALU.

[20 Bom. 491

6.—*Mamlatdars Courts Act (Bombay Act III of 1876)—Irregular decree of Mamlatdar made by consent of parties.*] The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in these suits, that unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months, the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant thereupon applied to the High Court in its extraordinary jurisdiction and alleged that the money had not been duly tendered:—*Held*, that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars Courts Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so. RAMRAO PALYAJI PATIL *v.* BABAJI DHONJI BIBVE.

[20 Bom. 630

7.—*Death of lessee during the term of lease—Possessory suit against lessee's heirs after the determination of the term.*] If heirs succeed to their fathers' rights under a lease, the jurisdiction of the Mamlatdar in a suit for possession arises on the determination of that lease against such heirs as though the original tenant were then alive. AMARCHAND HINDUMAL *v.* SAVALYA.

[21 Bom. 738

8.—*Dispossession of a third person not a party to suit—Remedy of person so dispossessed—Civil Procedure Code (1882), s. 622.*] *G* got a decree for possession against *P* in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of *C*, who was in possession, and who was not a party to the decree:—*Held*, that the Mamlatdar's order for the execution of the decree by the ouster of *C* was without jurisdiction, and that it should be set aside under s. 622 of the Civil Procedure Code. CHINAYA *v.* GANGAVA.

[21 Bom. 775

MAMLATDAR, JURISDICTION OF—*concluded.*

9.—*Remedy as between joint owners put into possession under decree of Civil Court.*] In execution of the decree obtained in 1886 in a Civil Court, the plaintiff and the defendants were put into joint possession of certain land. The plaintiff subsequently brought this suit in the Mamlatdar's Court to recover possession of the said land, alleging that the defendants by taking cocoanuts from trees standing thereon had dispossessed him of the said land otherwise than by due course of law. The Mamlatdar held that the plaintiff had been thereby dispossessed, and passed a decree ordering the defendants to deliver up possession of the land to the plaintiff, together with the trees growing thereon:—*Held*, that the Mamlatdar had no jurisdiction to pass the decree. The Civil Court had passed a decree giving the parties joint possession of the land, and the Mamlatdar had no jurisdiction to override that decision and to place the plaintiff in exclusive possession. By the decree of the Civil Court they were determined to be joint owners, and the remedy in case of unequal possession or taking of produce was a suit for an account or for partition. BHAU *v.* DADE KRISHNAJI BHAGVI.

[21 Bom. 777

MAMLATDARS COURTS ACT (BOMBAY ACT V OF 1864).

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[21 Bom. 88

——, s. 15.

See LIMITATION ACT, ART. 47.

[18 Bom. 348

MAMLATDARS COURTS ACT (BOMBAY ACT III OF 1876).

——, Decision under.

See PRACTICE—CIVIL CASES — REFERENCE TO HIGH COURT.

[21 Bom. 806

——, s. 3, cl. 1.

—*Head karkun taking temporary charge of office of Mamlatdar—Decree made by him in possessory suit—Jurisdiction—Bombay Land Revenue Code (Bombay Act V of 1879), s. 15.*] A *karkun* taking temporary charge of the office during the absence of the Mamlatdar on casual leave is not a Revenue Officer ordinarily exercising the powers of a Mamlatdar, within the meaning of s. 3 (1) of the Mamlatdars Courts Act (Bombay Act III of 1876). He is an officer exercising on an extraordinary occasion some such powers under the Bombay Land Revenue Code (Bombay Act V of 1879), s. 15. Therefore a decree passed by him in a possessory suit is a decree made by an unauthorised person purporting to exercise a jurisdiction which no competent authority had conferred upon him. NINGAPA *v.* DODAPA.

[21 Bom 558

MAMLATDARS COURTS ACT (BOMBAY ACT III OF 1876)—*concluded.*

——, s. 4, cl. 2.

—*Jurisdiction—Suit for injunction for disturbance of possession—Possession of landlord by tenant—Physical possession—Right of suit.*] There must be physical possession to enable an aggrieved person to invoke the Mamlatdar's assistance in a case falling under the second clause of s. 4 of the Mamlatdars Courts Act (Bombay Act III of 1876). A person who is in possession through his tenant cannot sue for an injunction for disturbance of possession under the Act. *Malabhai* v. *Keshavbhai*, I. L. R. 12 Bom. 419, approved and followed. ABA BIN SADOBA *v.* PARVATRAO BIN GANPATRAO.

[18 Bom. 46

——, s. 13.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

[21 Bom. 91

——, s. 15.

See MAMLATDAR, JURISDICTION OF.

[18 Bom. 449
[19 Bom. 289
[20 Bom. 260

——, s. 17.

—*Mamlatdar, Duty and jurisdiction of—Execution of Mamlatdar's decree by Mamlatdar under directions of Collector—Superintendence of High Court.*] A Mamlatdar having under the direction of the Collector executed a decree passed by himself directing the removal of a dam:—*Held*, that though it might be improper for the Collector to issue such a direction, which legally could only issue from the High Court, the High Court would not set aside the execution if otherwise valid. Section 17 of the Mamlatdars Courts Act (III of 1876) is imperative, and leaves to the Mamlatdar no discretion as to the duty of enforcing the decree. The Act does not purport to provide detailed rules as to applications for execution, and a Mamlatdar's Court is not governed as to execution of decrees by the ordinary rules of procedure; and provided the procedure followed gives effect in the end to the intention of s. 17, the Court will not interfere:—*Held*, also, that, under s. 17 of the Mamlatdars Courts Act, a Mamlatdar was not precluded from himself supervising the execution of a decree in a case in which the village officers were from interest or other cause unlikely to give proper effect to it. RAKHMA *v.* TULAJI.

[19 Bom. 675

——, s. 18.

See LIMITATION ACT, ART. 47.

[18 Bom. 348

——, s. 18.

—*Right of suit—Suit to set aside Mamlatdar's order.*] No suit will lie to set aside an order validly passed by a Mamlatdar under Bombay Act III of 1876, though such an order may be superseded by a decree of a Civil Court. TULJARAM *v.* BAMANJI KHARSEDJI.

[19 Bom. 828

MANAGER.

See BANKERS.
[16 All. 88

See BENGAL TENANCY ACT, S. 95.
[22 Calc. 634
[23 Calc. 522

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[18 Bom. 522

See SALSETTE, LAW APPLICABLE IN.
[19 Bom. 680

——, **Admission by.**

See MINOR—REPRESENTATION OF MINOR IN SUITS.
[24 Calc. 853
[L. R. 24 I. A. 107

—— **of company.**

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS.
[21 Calc. 915

—— **of endowment.**

See ACT XX OF 1863, S. 11.
[19 Mad. 395

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.
[17 Mad. 343
[L. R. 21 I. A. 71

See DECREE—CONSTRUCTION OF DECREE—ENDOWMENT.
[17 Mad. 343
[L. R. 21 I. A. 71

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.
[18 Mad. 359
[19 Bom. 271
[24 Calc. 77

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[18 Bom. 507

——, **Suit to set aside alienation by.**

See LIMITATION ACT, ART. 91.
[24 Calc. 77

—— **of joint family.**

See HINDU LAW—JOINT FAMILY—POSITION AND POWER OF MANAGER.
[16 All. 231
[18 Mad. 73
[20 Bom. 155

MANAGER—*concluded.*

See CASES UNDER HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION OF MEMBERS—MANAGER.

See HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.
[18 Bom. 520

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION, &C.
[18 Bom. 147
[21 Bom. 616

See HUNDI.
[20 Bom. 488

See INSOLVENT ACT, S. 7.
[19 Mad. 74

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.
[18 Bom. 141

See SALSETTE, LAW APPLICABLE IN.
[19 Bom. 680

——, **Liability of, to account.**

See MESNE PROFITS—RIGHT TO, AND LIABILITY FOR, MESNE PROFITS.
[19 Bom. 532

—— **of lunatic.**

See LUNATIC.
[18 Mad. 472
[20 Bom. 150, 659

—— **of railway, Agent of.**

See RAILWAYS ACT, S. 77.
[24 Calc. 306

MAP.

See EVIDENCE—CIVIL CASES—MAPS.
[22 Calc. 252
[23 Calc. 335

MAPILLAS.

See MALABAR LAW—JOINT FAMILY.
[17 Mad. 69

MARGINAL NOTES TO SECTIONS OF ACT.

See STATUTES, CONSTRUCTION OF.
[23 Calc. 55

MARRIAGE.

See HINDU LAW—MARRIAGE.

See MAHOMEDAN LAW—MARRIAGE.

See SUCCESSION ACT, S. 4.
[23 Calc. 506

MARRIAGE—*concluded.*

——, Agreement to procure.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

[17 Mad. 9

——, Expenses of.

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.

[18 All. 474

——, Nullity of.

See HUSBAND AND WIFE.

[21 Bom. 77

——, Re-marriage.

See HINDU LAW—INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

[22 Calc. 589

——, Suit for dissolution of.

See CASES UNDER DIVORCE ACT.

——, Unauthorised solemnisation of.

See MARRIAGE ACT, S. 68.

[17 Mad. 391
[18 Mad. 230
[20 Mad. 12

——, Validity of.

See MAHOMEDAN LAW—ACKNOWLEDGMENT.

[21 Calc. 666
[L. R 21 I. A. 56

MARRIAGE ACT (XV OF 1872).

——, s. 3.

See s. 68.

[18 Mad. 230

——, s. 5.

See s. 68.

[17 Mad. 391

——, ss. 5, 10, 12, 13, 38, 68, 70 and 73—*Person authorised to perform marriages—Omission of formalities required, as notice, &c.*] *S*, an episcopally-ordained priest of the Syrian Church, under the jurisdiction of the Patriarch of Antioch, solemnised two marriages according to Roman ritual without publishing or causing to be affixed the notices of such marriages required by Part III of the Act. It was proved that *S* used the Roman ritual with the sanction of his Bishop, who was appointed by the Patriarch:—*Held*, that *S*, having received episcopal ordination, was authorised to solemnise the marriages according to the rules, rites, ceremonies and customs of his church, and that it was not shown that a marriage solemnised with the Roman ritual under the sanction of the Bishop of the Syrian Church was not solemnised according to the rules, rites, ceremonies and customs of the Syrian Church:—*Held*, further, that Part III of the Act only applies to ministers of religion licensed under the Act and not to episcopally-ordained persons. CAUSSAVEL *v.* SAUREZ.

[19 Mad. 273

——, ss. 18 and 66.—*False declaration—Penal Code (Act XLV of* 1860), *s.* 193—*Maxim, "Ignorantia juris non excusat."*] The maxim *ignorantia juris non excusat* cannot be applied to a declaration, though in fact false, made under s. 18 of Act XV of 1872, inasmuch as the declaration required by that section to be made is a declaration as to the belief only of the person making it; and further, in order to entail the penal consequences provided for by s. 66 of the said Act, such false declaration must be made "intentionally." QUEEN-EMPRESS *v.* ROBINSON.

[16 All. 212

1.—s. 68.—*Unauthorised marriage of a Christian child—Persons professing Christian religion.*] The accused who was charged with having committed an offence under the Indian Christian Marriage Act, s. 68, was acquitted on its appearing that the Christian whose marriage he purported to solemnise was a child of the age of three years. The child had been baptised, and her father was a Christian:—*Held*, that the child was a person professing the Christian religion within the meaning of s. 3 of the Indian Christian Marriage Act, and that the acquittal was wrong. QUEEN-EMPRESS *v.* VEERADU.

[18 Mad. 230

2.—s. 68.—*"Solemnise," Meaning of—Performance of marriage by unauthorised person—Abetment.*] In the Indian Christian Marriage Act, s. 68, the word "solemnise" is equivalent to the words "conduct, celebrate or perform." Therefore any unauthorised person, not being one of the persons being married, who takes part in performing a marriage, that is, in doing any act supposed to be material to constitute the marriage, is liable to be convicted under that section; and a charge of abetment is sustainable against the persons being married. QUEEN-EMPRESS *v.* PAUL.

[20 Mad. 12

3.—s. 68 and s. 5.—*Solemnisation of marriage under Hindu rites between a Native Christian and a Hindu by a person not authorised to perform marriages under s.* 5 *of the Act.*] A person who performs a ceremony of marriage according to Hindu form between a Native Christian and a Hindu commits an offence under s. 68 of Act XV of 1872, unless he is authorised to solemnise marriages under s. 5 of the Act. See *Anonymous case*, 6 Mad. App. 20. QUEEN-EMPRESS *v.* YOHAN.

[17 Mad. 391

MARRIED WOMAN.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[18 Bom. 468

MARRIED WOMEN'S PROPERTY ACT (III OF 1874).

——, s. 8.—*Insolvency of married woman—Property settled on her for separate use without power of anticipation, whether comprised in the vesting order or not—Insolvent Act* (11 *and* 12 *Vict. cap.* 21), *s.* 63.] A creditor's right to be satisfied out of the separate property of a married woman is, in the case of post-nuptial debts, restricted to the property as to which there is no restraint on anticipation. Section 8 of Act III of 1874 was not intended to give married women the power of evading such restraint. *Hippolite* v. *Stuart*, I. L. R. 12 Calc. 522, dissented from. IN RE MANTEL.

[18 Mad. 19

MARSHALLING OF SECURITIES.

See MORTGAGE—MARSHALLING.

[18 Bom. 160

MASTER AND SERVANT.

—*Damage by cutting trees on land—Liability of employer not established on the facts, in respect of his servant's injury, to a third party.*] On a claim by the Official Receiver for damages for the wrongful felling and carrying away of trees growing on part of the estate held on trust by him, those acts, to the injury of the owners whom he represented, were proved against certain of the defendants holding some employment under others, who were made co-defendants with them in this suit. These co-defendants were not proved to have ordered such acts, nor was there any evidence that to cut or carry away timber was within the scope of the employment of any of the defendants. The co-respondent employers were not therefore under any legal responsibility in the matter. CASPERSZ *v.* KISHORI LAL ROY CHOWDHRI.

[23 Calc. 922

MAXIM.

——, "Ignorantia juris non excusat."

See MARRIAGE ACT, S. 18.

[16 All. 212

——, "Respondeat superior."

See ABETMENT.

[20 Bom. 394

MEASUREMENT OF LAND.

——, Power of Amin in.

See PENAL CODE, S. 186.

[22 Calc. 286

MEASUREMENT OF LAND—*concluded.*

——, Question of standard of.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[22 Calc. 477

MERCHANDISE MARKS ACT (IV OF 1889).

——, ss. 6 and 7.

See CRIMINAL PROCEDURE CODE, S. 403.

[23 Calc. 174

MERCHANT SHIPPING ACT, 1854 (17 and 18 Vict. cap. 104).

——, s. 267.

See OFFENCE COMMITTED ON HIGH SEAS.

[21 Calc. 782

MERCHANT SHIPPING ACT, 1855 (18 and 19 Vict. cap. 91).

——, s. 21.

See OFFENCE COMMITTED ON HIGH SEAS.

[21 Calc. 782

MERGER.

See LIMITATION ACT, ART. 47.

[18 Bom. 348

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[20 Mad. 486

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[21 Calc. 869

MESNE PROFITS. *Col.*

1. Right to, and Liability for, Mesne Profits ... 827
2. Assessment in Execution, and Suits for Mesne Profits ... 828

See DEBTOR AND CREDITOR.

[22 Calc. 434

[L. R. 22 I. A. 68

See DECREE—CONSTRUCTION OF DECREE—MESNE PROFITS.

[19 All. 296

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[23 Calc. 205

——, Ascertainment of.

See MUNSIF, JURISDICTION OF.

[21 Calc. 550

——, Assessment of.

See COURT-FEES ACT, S. 11.

[24 Calc. 173

MESNE PROFITS—*continued.*

——, Decree for.

See HINDU LAW — WIDOW—DECREES AGAINST WIDOW AS REPRESENTING ESTATE, OR PERSONALLY.

[22 Calc. 974

——, Liability for.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

[17 Mad. 140

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[17 Mad. 251

——, Suit for.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[22 Calc. 501

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—GENERALLY.

[23 Calc. 693

See LIMITATION ACT, ART. 109.

[24 Calc. 413

See LIMITATION ACT, ART. 178.

[21 Calc. 259

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[17 All. 533

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—MESNE PROFITS.

[23 Calc. 884

——, Suit for possession and for.

See COURT-FEES ACT, S. 11.

[24 Calc. 173

See COURT-FEES ACT, S. 17.

[16 All. 401

See RES JUDICATA—RELIEF NOT GRANTED.

[21 Calc. 252

(1) RIGHT TO, AND LIABILITY FOR, MESNE PROFITS.

1.—*Right to mesne profits previous to partition—Joint family—Manager's liability to account—Mesne profits subsequent to partition, how recoverable—Civil Procedure Code* (1882), *s.* 244—*Right of suit.*] Although, as a general rule, no member of an undivided Hindu family can have any claim to mesne profits previous to partition, yet mesne profits may be allowed on partition where one member of the family has been entirely excluded from the enjoyment of the property, or where it has been held by a member who claimed to treat it as impartible, and therefore exclusively his own. Where a decree for partition is silent about mesne profits subsequent to the institution of the suit, a party is at liberty to assert his right to such profits by a separate suit. Section 244, para. 2 of the Code of Civil Procedure (Act XIV of 1882) expressly reserves such a right of suit. BHIVRAV *v.* SITARAM.

[19 Bom. 532

2.—*Nature of possession — Trespasser.*] The plaintiffs, who were the junior members of a Malabar *edom* of which defendants Nos. 3 to 5 were the senior members, sued to recover with mesne profits possession of certain property, offering to pay the amount of a *kanom* advanced by defendant No. 1. It appeared that the land had been the subject of a *kanom* demise in 1865, that defendant No 3, the then *karnavan*, had obtained in 1878 a decree for its redemption the right to execute which he assigned to a stranger, who executed it, and took possession of the property, taking from the *karnavan* a new *kanom* deed. Subsequently defendants Nos. 4 and 5 obtained a decree for possession and the cancellation of both the assignment and the *kanom* deed; but this decree was attached in execution proceedings in another suit and purchased by defendant No. 1, who executed it, purchased the property, deposited the *kanom* amount, and took possession on the 8th March, 1884. The plaintiffs, who had meanwhile taken abortive proceedings to defeat the first defendant's title, instituted a suit in August, 1884, praying for a decree that the sale to him be set aside without praying for possession:—*Held*, that defendant No. 1 was not a trespasser merely, and the plaintiffs were entitled to a deduction of the profits for the whole period during which he was in possession in computing the amount payable by them before they recovered the land. SANKARAN *v.* PARVATHI.

[19 Mad. 145

(2) ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS.

3.—*Order in execution of decree giving mesne profits not awarded by decree.*] An order, assumed to be made by a Court in execution, that the decree-holders should have mesne profits which had not been awarded in their decree, was held to be made without jurisdiction, and could not be regarded as taking effect. KALKA SINGH *v.* PARAS RAM.

[22 Calc. 434
[L. R. 22 I. A. 68

4.—*Suit for possession and mesne profits—Inquiry as to the latter deferred by the judgment—Decree silent as to mesne profits—Decree, Form of—Civil Procedure Code, ss.* 45, 212 *and* 244.] A Court, which had virtually adjudged mesne profits to the claimant in the same judgment in which it

MESNE PROFITS—*concluded.*

(2) ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS—*concluded.*

decided that she was entitled to the immoveable property claimed, left open the question of the amount of those profits to be decided in subsequent proceedings. In the decree which followed no mention was made of the profits:—*Held*, that it was competent to the Court to defer the inquiry in that manner, nothing in the Code of Civil Procedure preventing such a disposal of the suit. If there had been a technical omission in the decree, it had not affected the right of the plaintiff. MUHAMMAD ABDUL MAJID *v.* MUHAMMAD ABDUL AZIZ.

[19 All. 155
[L. R. 24 I. A. 22

5.—*Execution of decree in suit for possession—Execution pending appeal—Reversal of decree on appeal and restoration of possession—Right to restitution of mesne profits—Civil Procedure Code* (1882), *ss.* 244 *and* 583—*Separate suit.*] *R* brought a suit against *K* for possession of certain land, and obtained a decree. *K* appealed, but pending the appeal *R* took possession of the land in execution of his decree. *K* was successful in the appeal, and was restored to possession in execution of the decree of the Appellate Court, which, however, was silent as to mense profits. In an application by *K* for mesne profits for the period during which *R* was unlawfully in possession:—*Held*, that *K* was entitled to restitution of such mesne profits in the execution proceedings, and it was not necessary for him to bring a separate suit to recover them. He was entitled to such restitution, either by reason of the power conferred by s. 583 of the Civil Procedure Code upon the Court which passed the decree (*Kalianasundram* v. *Egnavedeswara*, I. L. R. 11 Mad. 261), or by reason of the inherent right that the Court has to order the restitution of the thing which had been improperly taken under the erroneous decree set aside in appeal. *Mookoond Lal Pal Chowdhry* v. *Mahomed Sami Meeah*, I. L. R. 14 Calc. 484. RAJA SINGH *v.* KOOLDIP SINGH.

[21 Calc. 989

MILITARY OFFICER, PAY OF.

See ATTACHMENT — SUBJECTS BY ATTACHMENT—SALARY.

[24 Calc. 102

MINOR.

Col.

1. Liability on Contracts ... 832
2. Representation of Minor in Suits ... 833
3. Bombay Minors Act (XX of 1864) ... 836

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[17 All. 531

See CUSTODY OF CHILD.

[23 Calc. 290

See GIFT.

[20 Mad. 147

MINOR—*continued.*

See CASES UNDER GUARDIAN.

See CASES UNDER HINDU LAW—GUARDIAN.

See HINDU LAW — JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

[20 Bom. 767

See HINDU LAW — JOINT FAMILY — NATURE OF, AND INTEREST IN, PROPERTY.

[20 Bom. 316
[21 Bom. 349

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—MANAGER.

[19 Bom. 803
[20 Bom. 150

See HINDU LAW — PARTITION—REQUISITES FOR PARTITION.

[18 Bom. 197

See HINDU LAW — PARTITION — RIGHT TO PARTITION—MINOR.

[19 Bom. 99

See INSPECTION OF DOCUMENTS.

[22 Calc. 891
[19 Bom. 350

See CASES UNDER LIMITATION ACT, S. 7.

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.

[17 Mad. 221
[18 Mad. 456
[20 Bom. 61
[23 Calc. 374

See LIMITATION ACT, ART. 127.

[18 Bom. 197

See MADRAS REVENUE RECOVERY ACT, S. 59.

[17 Mad. 189

See MAHOMEDAN LAW—DEBTS.

[20 Bom. 338

See MAHOMEDAN LAW—GUARDIAN.

[20 Bom. 199
[18 All. 373

See MAHOMEDAN LAW—MORTGAGE.

[20 Bom. 116

See MALABAR LAW—JOINT FAMILY.

[18 Mad. 38

See PARSI MARRIAGE AND DIVORCE ACT, S. 30.

[18 Bom. 366

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 539

MINOR—*continued.*

See REVIEW—POWER TO REVIEW.
[19 Bom. 571

——, **Agreement to compensate, for services rendered.**

See CONTRACT ACT, s. 2.
[20 Bom. 755

—— , **Alienation of property of, by guardian.**

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[18 Mad. 193

——, **Appeal on behalf of.**

See LIMITATION ACT, s. 5.
[20 Bom. 104

——, **Bond executed by.**

See SURETY—LIABILITY OF SURETY.
[19 Bom. 697

——, **Contract on behalf of.**

See SPECIFIC PERFORMANCE.
[22 Calc. 545
[18 Mad. 415

——, **Disability of, when an alien.**

See LETTERS OF ADMINISTRATION.
[21 Calc. 911

——, **Illegal disposal of.**

See HINDU LAW—CUSTOM—ADOPTION.
[17 Mad. 127

See PENAL CODE, s. 372.
[21 Calc. 97

See PENAL CODE, s. 373.
[22 Calc. 164
[18 All. 24

——, **Liability of, on contract.**

See MAJORITY ACT, s. 3.
[21 Bom. 281

See ONUS OF PROOF—HINDU LAW—ALIENATION.
[17 All. 125

See PLEADER—REMUNERATION.
[17 Mad. 306

——, **Misrepresentation by.**

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[21 Bom. 198

——, **Omission to appoint guardian for.**

MINOR—*continued.*

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.
[23 Calc. 686

——, **Suit by.**

See LIMITATION ACT, ART. 91.
[19 Bom. 593

See REGISTRATION ACT, s. 77.
[18 Mad. 99

See WAIVER.
[19 Mad. 127

——, **Suit on behalf of.**

See CIVIL PROCEDURE CODE, s. 102.
[22 Calc. 8

See PRACTICE — CIVIL CASES — PARTY ATTAINING MAJORITY.
[22 Calc. 270

(1) LIABILITY ON CONTRACTS.

1.—*Necessaries — Bond executed by minor—Suit against a minor on a registered bond executed by him for necessaries—Contract Act (IX of 1872), s. 68.*] On the 20th April, 1886, a sum of money was advanced by *A* to a minor who executed a bond in respect thereof and duly registered the same. The money was required by the minor to provide for his defence in certain criminal proceedings then pending against him on a charge of dacoity, and was used by him for that purpose. On the 18th June, 1892, *A* instituted a suit against the minor for the amount due on the bond. It was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable to *A* for the amount advanced; that it was not advanced for "necessaries;" that he was not liable under the bond:—*Held*, that the liberty of the minor being at stake, the money anvanced must be taken to have been borrowed for "necessaries" within the meaning of s. 68 of the Contract Act. In such a case the bond being the basis of the suit could not be ignored and treated as non-existent, and on its being proved to have been executed by the minor in respect of money advanced for necessaries, the plaintiff was entitled to a decree. SHAM CHARAN MAL *v.* CHOWDHRY DEBYA SINGH PAHRAJ.
[21 Calc. 872

2.—*Capacity of minor to contract—Law of domicile—Contract Act (IX of 1872), ss. 11 and 128—Suit on bond executed by minor and not ratified on his attaining majority—Liability of surety of minor.*] By the law of England, the question of the capacity of a person to enter into a contract is decided by the law of his domicile. This principle of English law is adopted by s. 11 of the Contract Act. A minor cannot be sued on a bond executed by him during minority, and not ratified by him after his majority. A surety to a bond passed by a minor for moneys borrowed

MINOR—*continued.*

(1) LIABILITY ON CONTRACTS—*concluded.*

for purposes of litigation not found to be necessary, is liable to be sued on it whether the contract of the minor is considered to be void or voidable. KASHIBA *v.* SHRIPAT NARSHIV.

[19 Bom. 697

3.—*Representations as to age known to be false—Liability of minor in equity—Action on the contract—Action framed in tort—Right of suit—Costs.*] Where an infant obtained a loan upon the representation (which he knew to be false) that he was of age:—*Held*, that no suit to recover the money could be maintained against him, there being no obligation binding upon the infant which could be enforced upon the contract either at law or in equity, but that the defendant should not be allowed costs in either Court. DHANMULL *v.* RAM CHUNDER GHOSE.

[24 Calc. 265

See SARAL CHAND MITTER *v.* MOHUN BIBI.

[25 Calc. 371

where the above case was doubted and distinguished.

(2) REPRESENTATION OF MINOR IN SUITS.

4.—*Suit on behalf of a person alleged to be, but not in fact, a minor—Procedure to be adopted when suit is instituted through next friend on behalf of an alleged minor who is not so in fact—Plaint, Amendment of.*] When a suit is instituted by a person alleging himself to be a minor, and the suit is brought through a next friend, and when it is found that the plaintiff was not at the date of the institution of the suit in fact a minor, the Court should not dismiss the suit, as the defendant can be fully indemnified by the payment of his costs. In such a case the proper remedy is for the defendant to apply to have the plaint taken off the file or amended, and if it be not amended, the next friend's name may be treated as mere surplusage, and the suit be allowed to proceed. TAQUI JAN *v.* OBAIDULLA *alias* NANHE NAWAB.

[21 Calc. 866

NET LALL SAHOO *v.* KAREEM BUX.

[23 Calc. 686

5.—*Representation of minor heirs as defendants by including Collector as defendant, as their guardian ad litem—Civil Procedure Code* (1882), *ss.* 13, 244 *and* 312—*Power of a Hindu son to question the alienation of an impartible estate by his father.*] Representation by a Collector of all minor sons of a deceased zemindar as their guardian *ad litem*, under the order of the Court, the Collector being added as a defendant in the suit, is an adequate representation of all the sons, even if the Collector could only treat, under Regulation V of 1804, the particular minor on whose behalf the Court of Wards was then managing the zemindari as their proper ward. Consequently, a suit brought by

MINOR—*continued.*

(2) REPRESENTATION OF MINOR IN SUITS—*continued.*

one of such minors, on his attaining majority, to set aside the sale of a portion of the zemindari property attached in execution of the decree given in the former suit, is barred by ss. 136, 244 and 312 of the Code Civil Procedure. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI.

[17 Mad. 316

6.—*Representation by guardian of person though not of estate—Bombay Minors Act* (*XX of* 1864), *s.* 2—*Decree binding minors.*] In execution of a decree against the estate of *V*, his estate was sold, and it ultimately came into the hands of the plaintiff as purchaser, who sued for partition. It was contended that two of the defendants, parties to the suit in which the decree was passed, being then minors were not properly represented by their mother, *G*, also a party defendant to the suit, she not having obtained a certificate of administration under Act XX of 1864, and that the decree did not therefore bind them:—*Held*, that s. 2 of Act XX of 1864 did not apply, as though *G* had not obtained a certificate she did not claim charge of the estate. *Vijkor* v. *Jijibhai Vaji*, 9 Bom. 313; and *Jadow Mulj* v. *Chhagan Raichand*, I. L. R. 5 Bom. 306, followed:—*Held*, also, that an issue having been raised and determined in the suit in which the decree was passed that *G* did represent the minors as guardian for the suit, and as the decree expressly named them as sued by *G*, their guardian, the minors were expressly made parties and were properly represented by *G*. *Hari* v. *Narayan*, I. L. R. 12 Bom. 427; and *Hari Saran Moitra* v. *Bhubaneswari Debi*, I. L. R. 16 Calc. 40; L. R. 15 I. A. 195, followed. VASUDEV MORBHAT KALE *v.* KRISHNAJI BALLAL GOKHALE.

[20 Bom. 534

7.—*Suit by minor in Mamlatdars Court for possession — Mamlatdars Courts Act* (*Bombay Act III of* 1876)—*Right to sue by next friend.*] A minor may sue for possession in the Mamlatdars Court by his next friend, although the Mamlatdars Courts Act (Bombay Act III of 1876) makes no provision for such a suit. DATTATRAYA KESHAB *v.* VAMAN GOVIND.

[21 Bom. 88

8.—*Next friend—Solicitor's costs for proceedings undertaken on the next friend's instructions—Liability of minor for costs when he repudiates the proceedings—Necessaries.*] A solicitor cannot recover the costs of litigation incurred by the next friend of a minor on his behalf from the *quondam* minor, who, on coming of age, repudiates the proceedings, there being no relation of contract between them. Assuming that the legal proceedings were in the nature of necessaries, the next friend is the person responsible to the solicitor. *Watkins* v. *Dhunnoo Baboo*, I. L. R. 7 Calc. 140, distinguished. BRANSON *v.* APPASAMI.

[17 Mad. 257

MINOR—*continued.*

(2) REPRESENTATION OF MINOR IN SUITS—*continued.*

9.—*Application for execution not being properly made—Objection not taken at proper time disallowed where minor afterwards properly represented.*] An application for execution of a decree was made, the applicant being a minor and being represented by a sub-manager under the Court of Wards. It was decided against the minor, and he then appealed. The Court of Wards subsequently released the decree-holder's estate, and pending the appeal a next friend was put on the record to represent the minor. On an objection being raised that the application having been made by a sub-manager was untenable:—*Held*, that the objection not having been raised in the Court below, and the minor having been properly represented, in appeal by a next friend, the objection could not be entertained. *Bhoopendro Narain Dutt* v. *Baroda Prosad Roy Chowdhry*, I. L. R. 18 Calc. 500, distinguished. NORENDRA NATH PAHARI *v.* BHUPENDRO NARAIN RAI.

[23 Calc. 374

10.—*Representation of minor by party not authorised to consent to decree—Invalid decree against minor on an alleged consent—Proof of authority to bind minor by consent—Bengal Regulation X of 1793—Manager of Court of Wards, Power of.*] A decree-holder, who rests his case upon his decree having been made against a minor by consent, is under the necessity of proving that the consent was given by some one having authority to bind the minor thereby. In 1872, in the Settlement Court, a decree for land was made adversely to a minor, of whose person, or for the suit, no guardian had been appointed. The minor's estate was under the charge of the Court of Wards, consisting, in the first instance, of the Deputy Commissioner of the district, who had appointed a manager of the estate. The *mukhtar* of the Court of Wards informed the Settlement Court that the manager consented to a decree, which was thereupon made in favour of the claimant:—*Held*, that there was no occasion to decide whether the minor was substantially a party to the suit in the Settlement Court, or whether his interests had not been prejudiced by his not having been impleaded through a guardian, or whether there had been fraud in the giving or alleging consent. But that the affirmative of the question whether the consent had been competently given on the minor's behalf was upon the defendant in the present suit, who had obtained the decree upon it. Their Lordships were of opinion that it had not been shown that the manager was authorised by the Court of Wards to give to the *mukhtar* authority to make the admission. It was not enough that the *mukhtar* was the *mukhtar* of the Court of Wards, and said that he had authority to admit the claimant's right. The decree of the Settlement Court was set aside on this last ground. The decision of the Original Court in this suit, that the claimant in the settlement suit had not proved the title claimed by him, was also affirmed. MUHAMMAD MUMTAZ ALI KHAN *v.* SHEORUTTANGIR.

[23 Calc. 934
[L. R. 23 I. A. 75

MINOR—*continued.*

(2) REPRESENTATION OF MINOR IN SUITS—*concluded.*

11.—*Guardian ad litem—Guardians and Wards Act (VIII of 1890), s. 53—Civil Procedure Code, s. 443, as amended by s. 53 of Act VIII of 1890.*] Section 53 of Act VIII of 1890, amending the Code of Civil Procedure, expressly requires the appointment of a guardian *ad litem*, whether or not a guardian is appointed under Act VIII of 1890. In a suit against a minor, the summons was attempted to be served on his guardian appointed under Act VIII of 1890, but no guardian *ad litem* was appointed in the suit. The suit was decreed *ex parte*, no one having appeared for the minor:—*Held*, that the decree must be set aside, and the case sent back in order that the minor might be represented in accordance with law and the case retried. DAKESHUR PERSHAD NARAIN SINGH *v.* REWAT MEHTON.

[24 Calc. 25

12.—*Wrongful admission of title against a minor—Suppression of facts by a manager appointed by the Court of Wards—Order of Settlement Court cancelled.*] At a settlement of a district in Oudh a sub-settlement was decreed in conformity with Act XXVI of 1866, which legalises rules as to claims in respect of subordinate rights to land. The claimant alleged himself to be in virtue of a *birt* tenure held by him, under-proprietor of a village within the *taluk* of a *talukdar* then a minor, whose estate was under charge of the Court of Wards, whose representative, the Deputy Commissoner of the district, had appointed a manager of the estate. This manager having reported favourably on the claim, the Deputy Commissioner sanctioned its admission; whereupon a decree for sub-settlement was made on the 30th June, 1871. The present suit was brought by the *talukdar*, after attaining full age, to have that decree set aside as having been obtained by fraud and collusion. That the manager was brother of the alleged *birt*-holder, and that he was family shareholder with him in the village, facts which the manager had suppressed, were facts proved in this suit. The defendants attempted, but failed, to establish by evidence the existence of the alleged *birt*:—*Held*, that the admission in the Settlement Court in 1871 was not binding on the plaintiff, and that, even assuming that the defendants' ancestor had been in some way in occupancy before 1857, the evidence was quite insufficient to show that a grant of a perpetual under-proprietary right had been obtained. The decree of the lower Appellate Court, cancelling the Settlement Court's order, was therefore upheld. RAM AUTAR *v.* MAHAMMAD MUMTAZ ALI.

[24 Calc. 853
[L. R. 24 I. A. 107

(3) BOMBAY MINORS ACT (XX OF 1864).

13.—*Bombay Minors Act, s. 12—Surety for guardian of a minor's estate—Release of surety—Contract Act (IX of 1872), s. 130.*] Where a surety for the guardian of a minor's estate appointed under the Bombay Minors Act (XX of 1864)

MINOR—*concluded.*

(3) BOMBAY MINORS ACT (XX OF 1864)—*concluded.*

applied to be released from his obligation as surety on account of the guardian's mal-administration of the estate:—*Held*, that the very object of requiring security was to guarantee the minor's estate against such misconduct or mismanagement on the part of the guardian; that the surety therefore could not be discharged; and that s. 130 of the Contract Act (IX of 1872) was not applicable to the case. *Quære:* Whether the surety may not apply to the Court for protection against the guardian. BAI SOMI *v.* CHOKSHI ISHVARDAS MANGALDAS.

[19 Bom. 245

MINORITY.

——, Disability of.

See CASES UNDER LIMITATION ACT, S. 7.

See LIMITATION ACT, ART. 177.

[18 Mad. 484

See MADRAS REVENUE RECOVERY ACT, S. 59.

[17 Mad. 189

——, Evidence of.

See EVIDENCE ACT, S. 35.

[18 All. 478

MIRASI TENURE.

See LANDLORD AND TENANT—EJECTMENT—GENERALLY.

[19 Bom. 138

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Bom. 507

MISAPPROPRIATION.

See CRIMINAL MISAPPROPRIATION.

See RECEIVER.

[17 Mad. 501
[18 Mad. 23
[20 Mad. 224

——, Damages for.

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &C.

[24 Calc. 672

MISCHIEF.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES, &C.

[21 Bom. 536

MISDIRECTION.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[21 Calc. 955

MISDIRECTION—*concluded.*

See CHARGE TO JURY—MISDIRECTION.

[21 Calc. 955

See CRIMINAL PROCEEDINGS.

[23 Calc. 252

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[23 Calc. 252

MISFEASANCE.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[18 All. 12
[19 Bom. 88

MISJOINDER OF CAUSES OF ACTION.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[24 Calc. 540

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[16 All. 130

ee CIVIL PROCEDURE CODE, S. 424.

[24 Calc. 584

See JOINDER OF CAUSES OF ACTION.

[17 All. 274
[18 All. 256

See LIMITATION ACT, S. 14.

[17 Mad. 299
[23 Calc. 821
[20 Mad. 48

See CASES UNDER MULTIFARIOUSNESS.

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[16 All. 130

MISJOINDER OF PARTIES.

See APPELLATE COURT — ERRORS AFFECTING OR NOT MERITS OF CASE.

[24 Calc. 540

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.

[17 Mad. 168

See LIMITATION ACT, S. 14.

[17 Mad. 299

See MADRAS LAND REVENUE ASSESSMENT ACT.

[19 Mad. 292

See MULTIFARIOUSNESS.

[16 All. 279

1.—*Civil Procedure Code* (1882), *s.* 26—*Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic—Cause of action, Meaning of—Parties.*] The plaintiffs 1 to 4 were the

MISJOINDER OF PARTIES—*concluded.*

daughter and daughter's sons of one *G*. They alleged that *G* died, leaving an infant son *X*, an infant daughter *H*, and a widow *C*; that the son died leaving *C* as heir, and that, upon *C's* death, the sons of *H* became entitled to the property of *X*, but that should it appear that *G* did not leave *X* as his heir, *H* would suceed to the estate of *G* as next heir; and that the plaintiffs jointly granted a *patni* settlement of the property to one *B* (plaintiff No. 5), but he was kept out of possession by the defendant who claimed it by purchase from the representatives of *P*, brother of *G*. The plaintiffs 1 to 5 joined in bringing the suit which was one for possession of the property upon establishment of title either of plaintiff No. 1 or of plaintiffs Nos. 2, 3 and 4. On the objection of the defendant under s. 26 of the Code of Civil Procedure, that the suit was not maintainable for misjoinder of plaintiffs:—*Held*, that the expression "cause of action" occurring in s. 26 of the Code is used, not in its comprehensive, but in its limited, sense, so as to include the facts constituting the infringement of the right, but not necessarily also those constituting the right itself, so that the qualification implied in the words "in respect of the same cause of action" will be satisfied if the facts, which constitute the infringement of right of the several plaintiffs, are the same, though the facts constituting the rights upon which they base their claim to that relief in the alternative may not be the same; and that as the plaintiffs in the case complained of the same wrongful act of the defendant constituting the infringment of their right, that was their cause of action, and as they all claimed the same relief, namely, possession, and further as they did not advance any antagonistic claim, such a case came within s. 26 of the Code, and was not bad for misjoinder of plaintiffs. *Lingammal* v. *Chinna Venkatammal*, I. L. R. 6 Mad. 239; *Nusserwanji Merwanji Panday* v. *Gordon*, I. L. R. 6 Bom. 266, dissented from; *Fakirapa* v. *Rudrapa*, I. L. R. 16 Bom. 119, followed. HARAMONI DASSEE *v.* HARI CHURN CHOWDHRY.

[22 Calc. 833

2.—*Joinder of plaintiffs—Wrongful act affecting the rights of the several plaintiffs—Trespass.*] Where certain persons were alleged to have committed a wrongful act by evicting the plaintiffs from certain land in which the first plaintiff claimed to be entitled to the *melvaram*, and the other plaintiffs to the *kudivaram*:—*Held*, that a suit brought by the plaintiffs jointly was not bad for misjoinder. MUTHUVIJAYA RAGHUNADHA RAJU TEVAR *v.* CHOCKALINGAM CHETTI.

[19 Mad. 335

MISREPRESENTATION.

See FRAUD—EFFECT OF FRAUD.

[24 Calc. 533

—— as to area of land sold.

See VENDOR AND PURCHASER—FRAUD.

[18 All. 322

MISREPRESENTATION—*concluded.*

—— by minor.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[21 Bom. 198

See MINOR—LIABILITY ON CONTRACTS.

[24 Calc. 265

MISTAKE.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—GENERALLY.

[21 Bom. 333

See TRUST.

[18 Bom. 551

—— in fact.

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE.

[19 Bom. 821

See WRONGFUL RESTRAINT.

[24 Calc. 885

—— in filling up stamped paper.

See STAMP ACT, S. 51.

[18 Mad. 122

—— in law.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[19 Bom. 374

See LIMITATION ACT, S. 14.

[19 All. 348

—— in statement of age.

See INSURANCE—LIFE INSURANCE.

[20 Bom. 99

——, Land sold by.

See LIMITATION ACT, ART. 12.

[20 Mad. 118

MOKURARI LEASE.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[21 Calc. 702

MONEY, DECREE FOR PAYMENT OF.

See CIVIL PROCEDURE CODE, S. 230.

[16 All. 418

MONEY DEPOSITED.

See LIMITATION ACT, ART. 60.

[18 Mad. 390

[19 Bom. 352, 775

"MONEY GRANT."

See PENSIONS ACT, S. 4.

[18 Bom. 816

MONEY HAD AND RECEIVED.

See LIMITATION ACT, ART. 97.

[18 Mad. 173

See LIMITATION ACT, ART. 120.

[18 All. 430

MONEY LENT.

See LIMITATION ACT, ART. 60.

[18 Mad. 390
[19 Bom. 352, 775

——, Suit for.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[23 Calc. 851

See RIGHT OF SUIT—MONEY LENT.

[23 Calc. 851

MONEY MISAPPROPRIATED.

See RECEIVER.

[17 Mad. 501

MONEY PAID.

See LIMITATION ACT, ART. 61.

[19 All. 244

—— to redeem crops distrained.

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—DAMAGES.

[24 Calc. 163

MONEY PAID FOR BENEFIT OF ANOTHER.

See VOLUNTARY PAYMENT.

[22 Calc. 28

1.—*Payment of revenue by the claimant of an estate while temporarily holding it under a decree in his favour, afterwards reversed—Liability of owner for money so paid for his benefit.*] Where a claimant having obtained possession of an estate under a decree in good faith has paid the revenue and cesses (in default of which payment the estate would have been sold), although the decree may have been reversed afterwards, and he may have been deprived of possession, he nevertheless is entitled to be repaid the amount by his opponent, who benefits by it, provided that he has not realised, or failed through any fault of his own to obtain, enough out of the rents and profits during his possession to cover this expenditure. The plaintiff had paid revenue and cesses in such a case:—*Held*, that on his accounting for mesne profits, and all that he had received, or might have received, from the estate, he should recover from the defendants, in whose favour the decree was ultimately made, the difference between his, the plaintiff's, payments and receipts. DAKHINA MOHAN ROY *v.* SARODA MOHAN ROY.

[21 Calc. 142
[L. R. 20 I. A. 160

MONEY PAID FOR BENEFIT OF ANOTHER—*concluded.*

2.—*Revenue due on account of Hindu widow's estate paid by lambardar—Remedy of lambardar after death of widow for recovery of money so paid—Decree against representative of Hindu widow.*] *G D*, a separated sonless Hindu, died possessed of certain zemindari property, which passed to his widow *J*. During *J's* possession, the *lambardar* of the village paid certain Government revenue due by *J* in respect of the property left by *G D*. *J* died, and the propery in question passed to *S N* as heir to *G D*. On suit by the *lambardar* to recover from *S N* the money paid on behalf of *J*, it was *held* that the only decree to which the *lambardar* was entitled was a decree against *S N* as *J's* representative payable out of the assets, if any, which had come to *S N* from *J*. *Seth Chitor Mal* v. *Shib Lal*, I. L. R. 14 All. 273, referred to. SHIAMANAND *v.* HAR LAL.

[18 All. 471

MONEY PAID UNDER DECREE.

—*Execution of decree — Payment of decree amount by one defendant—Reversal of decree on appeal by another defendant—Right to refund—Civil Procedure Code, s.* 583.] In a suit for rent, together with interest thereon, brought by a mortgagee against a tenant in occupation of the mortgage premises, one claiming title against the mortgagee was joined as second defendant. The suit was dismissed in the Court of first instance, but the Court of first appeal passed a decree as prayed in the plaint: and in execution the principal amount of the rent claimed, which had been paid into Court by the first defendant with the request that it should be paid out to the person entitled to it, was paid over to the plaintiff. The first defendant preferred a second appeal against the decree, so far as it awarded interest and costs: this second appeal was dismissed. The second defendant, however, preferred against the entire decree a second appeal which was successful, and the High Court dismissed the suit throughout. On an application by the first defendant for refund of the money paid by him as stated above:—*Held*, that the applicant was not entitled to the refund claimed. KASSIM SAIB *v.* LUIS.

[17 Mad. 82

MONEY PAYABLE UNDER ORAL CONTRACT.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[20 Mad. 481

MONEY, SUIT FOR.

See LIMITATION ACT, ART. 113.

[16 All. 3

See RES JUDICATA—MATTERS IN ISSUE.

[20 Mad. 418

See VALUATION OF SUIT—SUITS.

[18 Bom. 696

MORTGAGE.

		Col.
1.	Form of Mortgages	... 847
2.	Construction of Mortgages	... 849
3.	Power of Sale	... 850
4.	Sale of Mortgaged Property	... 850
	(*a*) Rights of Mortgagees	... 850
	(*b*) Purchasers	... 854
5.	Marshalling	... 857
6.	Tacking	... 858
7.	Redemption	... 858
	(*a*) Right of Redemption	... 858
	(*b*) Redemption of Portion of Property	... 863
	(*c*) Redemption otherwise than on Expiry of term	... 864
	(*d*) Mode of Redemption and Liability to Foreclosure	... 864
8.	Foreclosure	... 864
	(*a*) Right of Foreclosure	... 864
	(*b*) Demand and Notice of Foreclosure	... 865
9.	Accounts	... 866

See CONTRACT ACT, S. 39.

[18 Mad. 126

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE.

[19 Mad. 249
[L. R. 23 I. A. 32
[20 Mad. 78

See CASES UNDER DECREE—FORM OF DECREE—MORTGAGE.

See EASEMENT.

[18 Bom. 382

See EVIDENCE ACT, S. 68.

[18 Mad. 29

See CASES UNDER EXECUTION OF DECREE — MODE OF EXECUTION — MORTGAGE.

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.

[18 All. 474

See HINDU LAW—DEBTS.

[19 All. 26

See CASES UNDER HINDU LAW—USURY.

See INSOLVENCY—AFTER-ACQUIRED PROPERTY.

[17 Mad. 21

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUIT, N.-W. P.

[19 All. 496

See LIMITATION ACT, ART. 134.

[18 Bom. 387
[19 Bom. 140

See MAHOMEDAN LAW—DEBTS.

[20 Bom. 338

MORTGAGE—*continued.*

See MAHOMEDAN LAW—DOWER.

[17 All. 19

See MAHOMEDAN LAW—MORTGAGE.

[20 Bom. 116

See MALABAR LAW—MORTGAGE.

[17 Mad. 271
[20 Mad. 124

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF AND CONSIDERATION FOR.

[17 All. 428

See ONUS OF PROOF—HINDU LAW—ALIENATION.

[17 All. 125

See PARTIES—PARIES TO SUITS—MORTGAGE, SUITS CONCERNING.

[21 Calc. 116

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[18 Bom. 522

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[24 Calc. 537, 746

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.

[24 Calc. 746

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

See SERVICE TENURE.

[18 Bom. 22

See STAMP ACT, S. 7.

[17 All. 55

See STAMP ACT, SCH. I, ART. 44.

[21 Calc. 241

See TRANSFER OF PROPERTY ACT, S. 135.

[21 Calc. 568, 792
[16 All. 313, 315
[18 All. 265
[23 Calc. 713
[24 Calc. 763

See VARIANCE BETWEEN PLEADING AND PROOF.

[18 Mad. 462
[19 Mad. 160

——, Apportionment of mortgage debt.

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[21 Bom. 567

See TRANSFER OF PROPERTY ACT, S. 82.

[19 All. 545

MORTGAGE—*continued.*

——, **Assignment of.**

See HINDU LAW—USURY.
[21 Bom. 38, 85

See LIMITATION ACT, ART. 47.
[18 Bom. 348

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[18 Bom. 348

—— **by one sharer of undivided shares.**

See COSTS—SPECIAL CASES—PARTITION.
[21 Calc. 904

——, **Construction of.**

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.
[21 Calc. 366
[L. R. 21 I.A. 1

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.
[18 Mad. 175

See TRANSFER OF PROPERTY ACT, S. 67.
[17 Mad. 131
[24 Calc. 677

——, **Discharge of.**

See DEBTOR AND CREDITOR.
[20 Mad. 461

——, **Form of.**

See LIMITATION ACT, ART. 147.
[20 Bom. 408

——, **Joint mortgage.**

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.
[18 All. 458

—— **of house to separate mortgagees.**

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
[16 All. 386

—— **of different shares in undivided property.**

See PARTITION—RIGHT TO PARTITION.
[18 All. 476

——, **Power to raise money by.**

See TRUST.
[20 Bom. 46

MORTGAGE—*continued.*

——, **Priority of.**

See REGISTRATION ACT, S. 50.
[18 Bom. 332, 444
[20 Bom. 158

——, **Sale of property subject to.**

See CASES UNDER SALE IN EXECUTION OF DECREE — MORTGAGED PROPERTY.

See STAMP ACT, SCH. I, ART. 16.
[18 Bom. 175

——, **Suit for sale on.**

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[16 All. 259

See CIVIL PROCEDURE CODE, S. 230.
[16 All. 418

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
[16 All. 270

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.
[17 All. 483

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.
[21 Calc. 116
[17 All. 537

See TRANSFER OF PROPERTY ACT, S. 67.
[17 Mad. 131

See CASES UNDER TRANSFER OF PROPERTY ACT, S. 99.

——, **Usufructuary mortgage.**

See LIMITATION ACT, S. 20.
[18 All. 295

See LIMITATION ACT, ART. 147.
[19 Mad. 411

See N.-W. P. RENT ACT, S. 7.
[16 All. 337

See POSSESSION—ADVERSE POSSESSION.
[16 All. 254

See TRANSFER OF PROPERTY ACT, S. 67.
[17 Mad. 131
[24 Calc. 677

See TRANSFER OF PROPERTY ACT, S. 68.
[17 Mad. 469
[16 All. 318
[19 All. 191

MORTGAGE—*continued.*

See TRANSFER OF PROPERTY ACT, S. 99.

[16 All. 415

[17 All. 520

See TRANSFER OF PROPERTY ACT, S. 135.

[16 All. 315

(1) FORM OF MORTGAGES.

1.—*Sale—Construction whether lands had been sold or mortgaged — Evidence — Documents explained by parol—Waste land grants—Usufructuary mortgage.*] Waste lands, granted in 1870, were transferred by the grantee in 1871 to his creditor, since deceased, from whose representatives in 1891 he claimed redemption, alleging that the transfer had been made upon a mortgage with possession. The grantee had previously, in 1870, mortgaged the lands to this creditor to secure advances taken for part payment of the purchase-money. In 1871, they arranged that the creditor should advance the entire balance, and they jointly petitioned for an entry to be made, in the register of waste land grants, that the ownership had been transferred from the one to the other of them. This entry was made, and endorsements to the same effect were made on the documents of grant. On the question whether the transaction was a mortgage, or a sale as the defendants alleged it to be, general evidence was given, in addition to the documentary; and among the facts in favour of the plaintiff was that the creditor had retained uncancelled, till his death, all acknowledgments for the money advanced by him in the transaction. Although, under other circumstances, and on the documents alone, the inference might have been that there had been a sale for some undisclosed consideration, yet, on the true construction of the joint petition, and the orders made thereon, the proper conclusion was that the entry and endorsements were intended only as a record of the arrangement proposed by the parties, and sanctioned by the registering officer. The intention was not to have an absolute sale. The transaction was *held* to be a mortgage which the plaintiff was entitled to redeem. KADER MOIDEEN *v.* NEPEAN.

[21 Calc. 882

[L. R. 21 I. A. 96

2.—*Sale — Conditions for repurchase.*] The plaintiffs sued to redeem an alleged mortgage made in 1823 by their ancestor to the ancestor of the defendant. The alleged mortgage recited a previous mortgage under which the mortgagee *G.* was in possession, and it stated that a sale had been contemplated, but the parties could not agree as to price, but that they had now settled it at Rs. 125 and the amount due on the mortgage at Rs. 200, and that the following arrangement was come to, *viz.*, that if within four years the mortgagor paid Rs. 125 with interest, he should get back the land; if not, that the land should be the absolute property of *G*:—*Held*, that this was not a mortgage but a sale. It was an agreement which put an end to the previously existing mortgage. A mere stipulation for repurchase

MORTGAGE—*continued.*

(1) FORM OF MORTGAGES—*continued.*

does not make a transaction a mortgage. To make a mortgage there must be a debt, and here there was no debt, nor was the property here conveyed as security. VASUDEO BHIKAJI JOSHI *v.* BHAU LAKSHMAN RAVUT.

[21 Bom. 528

3.—*Mortgage or conditional sale—Change of name in Government records—Subsequent agreement to retransfer land in Government records on payment of debt.*] In 1877 the plaintiff being indebted to the defendant transferred certain land to the defendant's name in the Government records. In July, 1879, the defendant executed the following document to the plaintiff reciting the previous transfer and agreeing to retransfer the land to the plaintiff's name on the 12th July, 1880, if the debt which would then be due should be paid off:—"In the village of Behrampur is your (plaintiff's) field, Survey No. 146, measuring 5 acres 3 *gunthas*, bearing assessment Rs. 16. You (plaintiff) have got it transferred to our name. That field therefore stands in our (defendant's) name in the Government records. You owe a debt to us. On account of that debt you have transferred it to our name. * * * *. The field shall be retransferred to your name when you repay the said debt to me. You have cultivated the field for the produce of Samvat 1936, and a lease in respect thereof you have this day passed to me. And a stamp paper was purchased at the time of the transfer for the execution of this agreement, but no agreement was then passed. This agreement is therefore this day passed to you when the lease is executed. And you owe me (a) debt bearing interest. I will pay out of my pocket the expenses to be incurred at present in cultivating the field. The debt due to me would in all amount to Rs. 100. If you repay all these rupees due to me till the Vaishakh Shudh 6th, Samvat 1936, I will take them and retransfer the field to your name. And if you fail to pay (them) till Vaishakh Shudh 4th, you will have no claim whatever to the said field. I shall not take the rupees after the 4th (chauth), nor shall I give (or transfer) the field to you ..... I shall lease the field to any one I like without keeping any claim of you as regards cultivation, manure and hedge. You have no claim or right whatever....." The plaintiff brought this suit to redeem the land, alleging that it had been mortgaged to the defendant, and that the debt had been paid off. The defendant contended that the transaction in 1877 was not a mortgage but a sale of the land to him, and that the document of July, 1879, was an agreement to resell it to the plaintiff:—*Held*, upon the evidence, that the transaction in 1877 was a mortgage to the defendant and not a sale. PATEL RANCHOD MORAR *v.* BHIKABHAI DEVIDAS.

[21 Bom. 704

4.—*Mortgage by conditional sale—Sale with a right of repurchase—Conditional sale effected by two contemporaneous deeds—Evidence dehors the documents showing what the transaction really was—Intention of parties.*] The plaintiff and

MORTGAGE—*continued.*

(1) FORM OF MORTGAGES—*concluded.*

the defendants executed upon the same day two documents. The one purported to be a deed of absolute sale of a certain estate by the plaintiff to the defendants. The other was an agreement by which the defendants covenanted, upon payment of a certain sum by a specified date, to reconvey the property sold by the first-mentioned deed:—*Held*, that evidence was admissible *dehors* the documents to show that the intention of the parties was not to effect an out-and-out sale with merely a right of repurchase under certain conditions left in the vendor, but to constitute a mortgage by conditional sale or *bai-bil-wafa*. The mere fact of a deed of absolute sale being accompanied by another giving a right of repurchase will not, for that reason alone, constitute the transaction one of mortgage, but the intention of the parties must be gathered from the terms of the deeds or from the surrounding circumstances or from both. *Alderson* v. *White*, 2 DeG. & J. 105; *Lincoln* v. *Wright*, 4 DeG. & J. 16; *Bhagwan Sahai* v. *Bhagwan Din*, L. R. 17 I. A. 98; I. L. R. 12 All. 387; *Ali Ahmad* v. *Rahmat-ullah*, I. L. R. 14 All. 195; *Ramasami Sastrigal* v. *Samiyappanayakan*, I. L. R. 4 Mad. 179; *Bapuji Apaji* v. *Senavaraji Marvadi*, I. L. R. 2 Bom. 231; *Bhup Kuar* v. *Muhamdi Begam*, I. L. R. 6 All. 37; and *Venkappa Chetti* v. *Akku*, 7 Mad. 219, referred to. BALKISHAN DAS *v.* LEGGE.

[19 All. 434

(2) CONSTRUCTION OF MORTGAGES.

5.—*Mortgage of a portion of bhag—Particulars of property stated in deed—Leading description—Falsa demonstratio—Bhag—Bombay Act V of 1862, s. 3.*] A mortgage deed of certain *bhagdari* lands stated that "all the properties appertaining to the entire *bhag*" were thereby mortgaged to the plaintiff. The *bhag* comprised (*inter alia*) four *gabhans* (building sites). But the clause, which set forth the particulars of the property mortgaged thereby, specified only two *gabhans*, one only of which belonged to the *bhag* and the other did not. The deed then proceeded:—"According to these particulars, lands, houses and *gabhans*, barnyards, wells, tanks, *padars* and pasture lands also, together with whatsoever may appertain to the *bhag*—all the properties appertaining to the whole *bhag* have been mortgaged and delivered into possession . . . . . There is no other property appertaining to the said *bhag* of which mention is not made here":—*Held*, that the particulars were "the leading description," and the supplementary description of them as constituting the entire *bhag* should be regarded as "*falsa demonstratio*":—*Held*, also, that the mortgage, so far as it included property belonging to the *bhag*, was void under the third section of Bombay Act V of 1862, but was valid as to property not comprised in the *bhag*. TRIBHOVANDAS JEKISANDAS *v.* KRISHNARAM KUBERRAM.

[18 Bom. 283

MORTGAGE—*continued.*

(2) CONSTRUCTION OF MORTGAGES—*concld.*

6.—*Usufructuary mortgage—Power of sale—Bombay Regulation V of 1827, s. 15, cl. 3.*] Where a mortgage provided that the mortgagee was to take possession of the land and enjoy the profits in lieu of interest, and the mortgagor was at liberty to recover possession in any year on payment of the principal amount:—*Held*, that the mortgage was a usufructuary mortgage, and under the circumstances of the case it was not the intention of the parties that the property should be sold, and that the mortgage-deed contained a special agreement which took the case out of the provisions of cl. 3, s. 15 of Regulation V of 1827, which was the law in force at the time the morgage was effected. SADASHIV ABAJI BHAT *v.* VYANKATRAO RAMRAO SHINDE.

[20 Bom. 296

7.—*Meaning of the term "sudi"—Interest post diem.*] The use of the term "*sudi*" (bearing interest) in a mortgage deed *held* not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage debt, principal and interest, in seven years. RIKHI RAM *v.* SHEO PARSHAN RAM.

[18 All. 316

(3) POWER OF SALE.

8.—*Form of mortgage—Bombay Regulation V of 1827—Transfer of Property Act (IV of 1882), s. 67—Mode of recovering mortgage money.*] Where a mortgage provides that possession of the mortgaged property, if taken by the mortgagee, is only to be taken for securing due payment of the interest, the mortgagee paying the balance (if any) of the profits to the mortgagor, the mortgage is not a usufructuary mortgage, but a simple mortgage, and is governed by the general law applicable to mortgages of this nature. In such a case, although there is no covenant to pay the principal other than that implied in the statement that the principal has been received, and that the property has been mortgaged for the stipulated term of years, and although there is no express provision that it is to be recovered from the mortgaged property, Regulation V of 1827 gives the mortgagee the right to bring the property to sale, and s. 67 of the Transfer of Property Act (IV of 1882) confers upon him the same privilege. YASHVANT NARAYAN KAMAT *v.* VITHAL DIVAKAR PARULEKAR.

[21 Bom. 267

(4) SALE OF MORTGAGED PROPERTY.

(*a*) RIGHTS OF MORTGAGEES.

9.—*Suit for sale of mortgaged property without redeeming prior mortgage—Form of decree—Transfer of Property Act (IV of 1882), s. 58—General Clauses Consolidation Act (I of 1868), s. 2, cl. 5.*] In a suit on a mortgage by a second mortgagee to which the prior mortgagee was a party, and in which the plaintiff prayed that the amount due to him might be realised by a sale of the mortgaged property, the Courts below dis-

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*continued.*

(*a*) RIGHTS OF MORTGAGEES—*continued.*

missed the suit, holding that the plaintiff was not entitled to sell the mortgaged property without redeeming the prior mortgage:—*Held*, that this decree was erroneous, and that the plaintiff was entitled to an order for sale of the mortgaged property subject to the lien of the prior incumbrancer. The words "immoveable property" in s. 58 of the Transfer of Property Act denote, having regard to the definition of "immoveable property" in s. 2, cl. 5 of the General Clauses Consolidation Act (I of 1868), not only the property itself as distinguished from any equity of redemption which the mortgagor might possess in the property, but include the rights of the mortgagor in the property mortgaged at the time of the second mortgage, or in other words his equity of redemption in such property. A second mortgage therefore is, as well as a first mortgage, a mortgage of "specific immoveable property" under s. 58. The cases of *Vencatachella Kandian* v. *Panjana Dien*, I. L. R. 4 Mad. 213; *Khub Chand* v. *Kalian Dass*, I. L. R. 1 All. 240; *Raghunath Prasad* v. *Jurawan Bai*, I. L. R. 8 All. 105; *Gangadhara* v. *Sivarama*, I. L. R. 8 Mad. 246; and *Umes Chunder Sircar* v. *Zahur Fatima*, I. L. R. 18 Calc. 164; L. R. 17 I. A. 201, referred to and approved as to the right of a second mortgagee to a sale subject to the lien of a prior mortgagee. KANTI RAM *v.* KUTUBUDDIN MAHOMED.

[22 Calc. 33

See BENI MADHUB MOHAPATRA *v.* SOURENDRA MOHAN TAGORE.

[23 Calc. 795

10.—*Prior and subsequent mortgagees—Rights of subsequent mortgagees where prior mortgage is usufructuary, and time has not arrived for redemption—Form of decree.*] *Held*, that where there exists a prior usufructuary mortgage, a subsequent mortgagee of the same property cannot bring the mortgaged property to sale in virtue of his incumbrance until such time as the usufructuary mortgage becomes capable of redemption. *Mata Din Kasodhan* v. *Kasim Husain*, I. L. R. 13 All. 432, explained and followed. AKHARA PANCHAITI *v.* SUBA LAL.

[18 All. 83

11.—*Effect of sale of portion of mortgaged property under a decree not on the mortgage—Right of mortgagee to have subsequent sale of mortgaged property taking into account the full value of the property previously brought to sale.*] When a mortgagee holding a mortgage over two distinct properties brings one of them to sale in execution of a decree against the mortgagor, not being a decree on his mortgage, and purchases such property himself, the whole mortgage is not necessarily thereby extinguished; but, if the mortgagee subsequently seeks to bring the mortgaged property to sale in execution of a decree obtained on his mortgage, he will have to bring into account the full value of the portion of the

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*continued.*

(*a*) RIGHTS OF MORTGAGEES—*continued.*

mortgaged property purchased by him under his former decree. *Sumera Kuar* v. *Bhagwant Singh* Weekly Notes, All. (1895) 1, followed; *Ahmad Wali* v. *Bakar Husain*, Weekly Notes, All. (1883) 61; *Ballam Das* v. *Amar Raj*, I. L. R. 12 All. 537 referred to. CHUNNA LAL *v.* ANANDI LAL.

[19 All. 196

12.—*Mortgage by joint owner—Mortgagee becoming purchaser of part of mortgaged property—Right of redemption of part of mortgaged property—Apportionment of mortgage-debt—Right of mortgagee to keep security entire—Right of purchaser of mortgagee's interest to sue for partition—Joint possession.*] When a mortgagee acquires by purchase the interest of some of the mortgagors, he acquires only a right to sue for partition after the redemption of the entire security has been effected. He must first surrender or restore the mortgage security and then urge what title he may have acquired by the purchase. The general rule is that a mortgagee has a right to insist that his security shall not be split up, but in the following cases there is no objection to do so and to rateably distribute the mortgage-debt:—(*a*) When the mortgagee does not insist on keeping the security entire. (*b*) When the original contract itself recites that the mortgagors join together in mortgaging their separate shares. (*c*) When the mortgagee has himself split up the security, *e.g.*, when he buys a portion of the mortgaged estate. In this case he is estopped from seeking to throw the whole burden on that part of the property still mortgaged with him. In 1872, the plaintiffs' father (*K*) and brother (*B*) mortgaged seven lots of land with possession to the father of defendants Nos. 1, 2 and 3. Four of these lots were subsequently sold to defendants Nos. 4 to 8, with the consent of the mortgagees, who continued in possession of the remaining three lots. In 1878, in execution of a decree, *B*'s interest in these latter three lots was sold, and was purchased by defendants Nos. 1, 2 and 3. In 1889, the defendants Nos. 1, 2 and 3 sold these three lots to defendant No. 9. In 1881, the plaintiffs (sons and brothers of the original mortgagors) sued to redeem all the lands comprised in the mortgage of 1872. The first Court as to the first four lots *held* that defendants Nos. 4 to 8 had been in adverse possession of the first four lots for more than twelve years, and that as to them the suit was barred. As to the remaining three lots it passed a decree for redemption of the plaintiffs' three-fourths share of the lands, and directed that on payment within six months by them of Rs. 500 to defendant No. 9 (who stood in the place of defendants Nos. 1, 2 and 3), they should be put in possession of the lands jointly with defendant No. 9. In appeal the decree was confirmed as to the first four lots, but as to the remaining three lots, the Judge found that the mortgage debt had been paid, and that a sum of Rs 348 5-0 was due from the mortgagees in pos-

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*continued.*

(*a*) RIGHTS OF MORTGAGEES—*continued.*

session (defendants Nos. 1, 2, 3 and 9) to the plaintiff. He therefore ordered payment of three-fourths of this amount by defendant No. 9 to plaintiffs, and directed that they should be put in possession of their three-fourths share of the lands jointly with defendant No. 9. On appeal to the High Court as to the right to redeem the said three lots:—*Held*, that the plaintiffs were entitled to redeem the whole of the said three lots which had been admittedly mortgaged in 1872 and not merely a three-fourths share thereof, and were also entitled to the whole of the surplus sum of Rs. 348 found due by the mortgagees in possession:—*Held*, also, that defendant No. 9, who had acquired, from the mortgagees (defendants Nos. 1, 2 and 3) the equity of redemption in part of the mortgaged property, was not entitled to possession of his share jointly with the plaintiffs. The mortgaged property should first be restored to the plaintiffs, and then defendant No. 9 might bring a separate suit for partition. NARAYAN *v.* GANPAT; GANPAT *v* NARAYAN.

[21 Bom. 619

13.—*Prior and subsequent mortgages—Price to be paid by a subsequent mortgagee redeeming after the mortgaged property has been brought to sale and purchased by the prior mortgagee—Transfer of Property Act (IV of 1882), ss. 74, 75 and 85.*] A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the prior mortgagee may have purchased the mortgaged property at an auction sale held in execution of a decree obtained by him without joining the subsequent mortgagee as a party; but such subsequent mortgagee must, if he wishes to redeem, pay to the prior mortgagee the full amount due on his mortgage. *Ganga Pershad Sahu* v. *Land Mortgage Bank*, I. L. R. 21 Calc. 366; and *Dadoba Arjunji* v. *Damodar Raghunath*, I. L. R. 16 Bom. 486, referred to. *Baldeo Bharthi* v. *Hushiar Singh*, Weekly Notes, All. (1895) 46, distinguished. DIP NARAIN SINGH *v.* HIRA SINGH.

[19 All. 527

14.—*Renewal of mortgage—Priority over subsequent incumbrance—Transfer of Property Act (IV of 1882), s. 10.*] Where a mortgagee, subsequently to the execution of the mortgage deed, takes another mortgage in renewal of the former deed, he has priority over incumbrances subsequent to the first deed. ALANGARAN CHETTI *v.* LAKSHMANAN CHETTI.

[20 Mad. 274

15.—*Sale by mortgagor of part of the mortgaged property—Effect of such sale on rights of the mortgagee.*] The right of a mortgagee to bring any portion of the mortgaged property to sale is not curtailed by the mortgagor subsequently to the mortgage selling a portion of the mortgaged property to a third person. *Lala Dilawar Sahai* v. *Dewan Bo'akiram*, I. L. R. 11 Calc. 258; *Rama*

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*continued.*

(*a*) RIGHTS OF MORTGAGEES—*concluded.*

Raju v. *Yerramilli Subbarayudu*, I. L. R. 5 Mad. 387; and *Panwari Das* v. *Muhammad Mashiat*, I. L. R. 9 All. 690, referred to. BHIKARI DAS *v.* DALIP SINGH.

[17 All. 434

16.—*Transfer of Property Act (IV of 1882), s. 88—Suit for sale on a mortgage—Purchase at auction sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which decree-holder must give credit to mortgagor.*] A mortgagee decree-holder, in a suit for sale under s. 88 of the Transfer of Property Act, 1882, brought part of the mortgaged property to sale, and, with the leave of the Court, purchased it himself. The amount realised by the sale being insufficient to satisfy the mortgage debt, the decree-holder applied for execution against the remainder of the property comprised in the mortgage:—*Held*, that the decree-holder was not bound to give credit to the mortgagor to the amount of the market value of the mortgaged property purchased by him, but only to the amount of the actual purchase-money. *Mahabir Parshad Singh* v. *Macnaghten*, I. L. R. 16 Calc. 682; *Sheonath Doss* v. *Janki Prosad Singh*, I. L. R. 16 Calc. 132; and *Gunga Pershad* v. *Jawahir Singh*, I. L. R. 19 Calc. 4, referred to. MUHAMMAD HUSEN ALI KHAN *v.* THAKUR DHARAM SINGH.

[18 All. 31

(*b*) PURCHASERS.

17.—*Second mortgage of property by original mortgagor, and first mortgagee paid off—Possession taken by new mortgagee—Suit for possession by plaintiff as purchaser in execution—Right of purchaser to recover—Right of second mortgagee to be repaid his advances by plaintiff keeping alive the first mortgage.*] On the 10th June, 1885, *T* mortgaged the property in dispute to *G* along with some other property. In 1886 the plaintiff obtained a money decree against *T*, and in execution of his decree he caused the property in dispute to be sold and purchased it himself, obtaining a certificate of sale on the 1st November, 1886. On the 13th February, 1888, *T* mortgaged the property in dispute along with other property to the defendant and paid off *G's* mortgage. *G* thereupon returned the mortgage-deed to *T* with a receipt for payment endorsed. After payment of *G's* mortgage the defendant took possession of the property. In July, 1888, *T* executed a further mortgage of the property to the defendant for Rs. 8,000. On the 30th August, 1888, the plaintiff having attempted to take possession was obstructed by the defendant. Thereupon the plaintiff brought this suit for possession:—*Held*, that the plaintiff was entitled to possession. The mortgage to the defendant was subsequent to the plaintiff's purchase of the equity of redemption. The defendant did not know of that purchase. He took the mortgage from *T*, to whom he advanced the money to pay off the previous mortgage to *G*. There was nothing

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*continued.*

(*b*) PURCHASERS—*continued.*

to show that there was any intention to keep *G's* mortgage alive in favour of the defendant. *Gokaldas Gopaldas* v. *Puranmal Premsukhdas*, I. L. R. 10 Calc. 1035; L. R. 11 I. A. 126, distinguished:—*Held*, also, that as the plaintiff was seeking to recover property which but for the defendant's payment to *G* would have been burdened with *G's* mortgage, and as the defendant when he advanced the money to *T* to pay off that mortgage did not know that *T* was no longer the owner of the equity of redemption, the plaintiff should give credit to the defendant for the sum paid by him; but as the defendant's mortgage comprised other properties besides the one in dispute, the plaintiff should recover possession on payment to the defendant of a proportionate part of *G's* mortgage-debt, having regard to the value of the property in dispute and that of the other mortgaged properties. *Mahomed Shamsool Hoda* v. *Shewakram*, 14 B. L. R. 226; L. R. 2 I. A. 7, followed. LOMBA GOMAJI *v.* VISHVANATH AMRIT TILVANKAR.

[18 Bom. 86

See YADAO BABAJI SURYARAO *v.* AMBO.

[21 Bom. 567

18.—*Sale in execution of decree of mortgaged land—Purchase of equity of redemption by decree-holder under s.* 294 *of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.*] *A* mortgaged certain land to *B*, but remained in possession thereof. Subsequently *A* sold a portion of the said land to *C* in consideration of her paying off the mortgage-debt due to *B*. *C* entered into possession, but was unable to satisfy the debt. *C* died, and *A* sued *C's* daughter and legal representative, for damages sustained by him from the non-payment of the purchase-money by *C*. *A* obtained a decree, and the money not being paid as therein decreed, applied for execution and brought to sale the equity of redemption vested in *C* by virtue of the sale. By leave of the Court *A* bid at the Court-sale and bought the right of redemption and recovered back possession of the land sold to *C*. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court-sale for the equity of redemption. The defendant contended that *A* was bound to give credit for the full value of the land under mortgage:—*Held*, that having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, *A's* position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*continued.*

(*b*) PURCHASERS—*continued.*

equity of redemption, is the cash payment for the equity of redemption *plus* the debt, *i.e.*, the amount undertaken to be paid to the mortgagee, and that for these amounts *A* was bound to give credit. KRISHNASAMI AYYAR *v.* JANAKIAMMAL,

[18 Mad. 153

19.—*Purchase of equity of redemption by subsequent mortgagee—Priority of mortgage—Merger of former mortgage in decree—Right of subsequent mortgagee to keep the prior incumbrance alive—Intention.*] Where there is a subsisting prior incumbrance, and a subsequent mortgagee advances money for the purpose of discharging it, but it is for his benefit still to keep it alive, his right to keep it alive is not affected by the fact that the prior incumbrance had at the time taken the form of a decree. *Adams* v. *Angell*, L. R. 5 Ch. D. 645, followed. PURNAMAL CHUND *v.* VENKATA SUBBARAYALU.

[20 Mad. 486

20.—*Mortgage of joint property—Subsequent mortgage of unascertained shares—Partition—Rights of purchasers in execution of decrees of the two mortgages—Form of decree.*] Joint property belonging to an undivided Hindu family constituted of five branches was mortgaged to *A* in 1876, and the share of one branch was mortgaged to *B* in 1880. A partition took place in 1881 when the mortgagors of *B* had their share allotted to them. In 1888 *A* sued on his mortgage not joining *B* as a defendant and obtained a decree, in execution of which he brought to sale the property comprised in his mortgage and purchased it in September, 1889. In 1889 *B* sued on his mortgage not joining *A* as a defendant and obtained a decree, in execution of which he brought his mortgagors' share to sale and purchased it and obtained possession in August, 1889. *A*, in taking possession of the property purchased by him, was obstructed by *B*, but an order was made in his favour. *B* now sued for the cancellation of this order and for an injunction restraining *A* for taking possession of the property from him. The Lower Courts decreed that the plaintiff might redeem the land on payment of one-fifth of the amount of the defendant's decree. The defendant appealed against this decree, the plaintiff taking no objections to it:—*Held*, on second appeal, that the decree was wrong, and that a decree as asked for by the plaintiff should be substituted for it. Such decree, however, was not to affect the right of the plaintiff to sue for redemption; nor of the defendant to enforce his rights as prior mortgagee. *Venkatanarasammah* v. *Ramiah*, I. L. R. 2 Mad. 103; *Nanack Chand* v. *Telukdye*, I.L.R. 5 Calc. 265; and *Dirgopal Lal* v. *Bolakee*, I.L.R. 5 Calc 269, referred to. RAMANADHAN CHETTI *v.* ALKONDA PILLAI.

[18 Mad. 500

21.—*Sale in execution of decree on prior unregistered mortgage—Right of purchaser—Claim of*

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*concluded.*

(*b*) PURCHASERS—*concluded.*

subsequent mortgagee in possession under registered mortgage—Rights of such subsequent mortgagee where he was not a party to the suit on prior mortgage—Right of redemption—Transfer of Property Act (IV of 1882), *s.* 75.] In October, 1887, the plaintiff purchased certain lands at a sale held in execution of a decree passed on an unregistered mortgage effected in 1862. The defendant was in possession as mortgagee under a subsequent registered mortgagee of 1867. He was not a party to the suit and decree of 1827. The plaintiff sued for possession. The defendant claimed that the plaintiff could not recover possession without paying off his (the defendant's) claim:—*Held*, that at the execution sale the plaintiff bought the property in dispute free from all subsequent incumbrances, subject only to the right of the defendant, if he so desired, to retain possession:—*Held*, also, that the plaintiff as purchaser stood in the place of the prior mortgagee and had a right to possession; that the defendant as subsequent mortgagee could not compel the plaintiff to pay off his (the defendant's) mortgage, but that the defendant not having been a party to the suit on the prior mortgage had a right, if he wished to retain possession, to pay off the plaintiff's claim. *Mohan Manor* v. *Togu Uka*, I. L. R. 10 Bom. 224, referred to and followed. DESAI LALLUBHAI JETHABHAI *v.* MUNDAS KUBERDAS.

[20 Bom. 390

22.—*Registration—Notice — Sale of mortgaged property in execution of a money decree without express notice of mortgage—Right of mortgagee to enforce mortgage against the property in hands of purchaser—Civil Procedure Code* (1882), *s.* 287.] A mortgagee under a registered mortgage-deed obtained a money decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 287 of the Civil Procedure Code (Act XIV of 1882), and the auction-purchaser had no actual knowledge of the mortgage. In a suit brought by the mortgagee against the mortgagors and the auction-purchaser to recover the mortgage-debt by sale of the mortgaged property:—*Held*, that except in a case of fraudulent concealment, the registration of the mortgage was notice to subsequent purchasers. The property was therefore liable under the mortgage, and the auction-purchaser was bound by it. DHONDO BALKRISHNA KANITKAR *v.* RAOJI.

[20 Bom. 290

(5) MARSHALLING.

23.—*Notice of prior mortgage to subsequent mortgagee—Doctrine of marshalling, Applicability of, to mortgages in the Mofussil.*] Before the extension of the Transfer of Property Act, 1882, to the Bombay Presidency, where two properties had been mortgaged to one person, and one of them was subsequently mortgaged to another person with notice of the former mortgage:—*Held* (JARDINE, J., dissenting) such subsequent mortgagee had an equity to call for a marshalling of the securities in his favour so as to require the first mortgagee to proceed to realise his security in the first instance out of the property not mortgaged to the second mortgagee. The English doctrine of marshalling of securities applies to mortgages in the Mofussil. CHUNILAL VITHALDAS *v.* FULCHAND.

[18 Bom. 160

24.—*Transfer of Property Act (IV of* 1882), *s.* 81—*Notice of mortgage—Registration.*] Mere registration is not "notice" within the meaning of s. 81 of the Transfer of Property Act (IV of 1882). *Shan Maun Mull* v. *Madras Building Company*, I. L. R. 15 Mad. 268, approved; *Lakshman Das Sarupchand* v. *Dasrat*, I. L. R. 6 Bom. 168, dissented from. It is a notice at or before the time of mortgage, which under the terms of s. 81 alone negatives the right conferred by that section. A purchaser at an execution sale under the second mortgage, whether he be the original mortgagee or not, purchases, not only the right of the mortgagor, but all the rights of the mortgagee acquired up to the sale, including the right to insist upon the plaintiff marshalling his securities, and there is nothing in s. 81 or elsewhere to destroy the right of marshalling by a notice given subsequent to the mortgage. INDERDAWAN PERSHAD *v.* GOBIND LALL CHOWDHRY.

[23 Calc. 790

(6) TACKING.

25.—*Subsequent agreement—Covenant to pay an additional sum—Charge—Compromise.*] In a suit on a mortgage, dated 1873, it appeared that the premises had been mortgaged in 1874, but the mortgagor had been left in possession under a lease; and that a suit brought by the mortgagee (on the rent reserved by the lease falling into arrears) was compromised in 1877 on the terms that Rs. 3,680 should be paid together with the amount secured by the mortgage of 1874. The instrument of compromise was not registered, and the amount was not paid:—*Held*, that the plaintiff's mortgage was subject to the mortgage of 1874 only and not to the arrangement comprised in the compromise. *Quœre:* Whether the compromise would, if registered, have charged the land with Rs. 3,680, or whether its effect was merely to make the equity of redemption conditional on payment of that amount, in such a manner as not to affect the rights of the subsequent mortgagee. UNNI *v.* NAGAMMAL.

[18 Mad. 368

(7) REDEMPTION.

(*a*) RIGHT OF REDEMPTION.

26.—*Mortgage to a firm—Subsequent mortgage to one member of the firm for personal loan, with stipulation for payment of new debt before prior*

MORTGAGE -*continued.*

(7) REDEMPTION—*continued.*

(*a*) RIGHT OF REDEMPTION—*continued.*

mortgage debt—Right to redeem first mortgage independently of later mortgage.] On the 13th July, 1877, a firm, of which defendants Nos. 1 to 4 were members, lent money to *N* on mortgage of certain property. Subsequently defendant No. 2 personally made a further loan to *N* who executed two *san* mortgage-deeds to him of the same property containing stipulations that these bonds should be paid before the mortgage of July, 1877. *N* died, and his widow and heirs assigned the equity of redemption of the mortgage of July, 1877, to the plaintiff, who sued the defendants to redeem. The defendants contended that the plaintiff was bound to pay off the two later bonds as well as the original mortgage-debt:—*Held*, that the later loan by defendant No. 2 being a personal loan by him, the firm, as such, had no equity to insist on its being paid before the mortgage was redeemed, whatever right defendant No. 2 in his personal capacity might have. But in this suit, which was one to redeem the mortgage, he was a party as member of the firm, and not in his individual capacity, and he could not therefore resist the plaintiff's right to redeem on any ground based on the promise of the two bonds executed to himself. CHHOTALAL GOVINDRAM *v.* MATHUR KEVALRAM.

[18 Bom. 591

27.—*Right to redeem made conditional on payment by mortgagor of another debt as well as mortgage debt—Effect of that other debt becoming barred by limitation—Right to redeem mortgage still subject to condition.*] A mortgage bond contained a clause stipulating that the mortgagors were not to redeem the mortgaged property without paying not merely the amount of the mortgage debt and interest, but also the amount due on a certain bond executed at the same time as the mortgage in respect of money due under a decree, and that, "unless the whole was paid off, neither the mortgagor nor any one else should have a claim." The mortgagee subsequently obtained a decree on the instalment bond and made several attempts to execute it, but failed, his *darkhast* being eventually rejected as time barred:—*Held*, that the right of redemption was made conditional on the payment of what was due on the instalment bond—a condition which was unsatisfied as long as such sum remained unpaid, although in contemplation of law there might be no longer a bond debt still in existence owing to a decree having been passed on the bond, and that decree having become barred by limitation. SUNDAR MALHAR PATEL *v.* BAPUJI SHRIDHAR.

[18 Bom. 755

28. *Decree for redemption omitting to state consequence of non-payment of mortgage-money within time specified—Limitation—Transfer of Property Act (IV of 1882), s. 92.*] Where a Court gave plaintiff a decree for redemption of a mortgage conditioned on payment by him of the mortgage-money within a specified time from the date of the decree, but omitted to state in such

MORTGAGE—*continued.*

(7) REDEMPTION—*continued.*

(*a*) RIGHT OF REDEMPTION—*continued.*

decree what would be the consequence of the plaintiff's default in so paying in the mortgage-money:—*Held*, that such omission could not operate to extend the period available to the plaintiff for payment beyond the maximum term provided for by s. 92 of Act IV of 1882. *Jai Kishn* v. *Bhola Nath*, I. L. R. 14 All. 529, referred to; *Bandhu Bhagat* v. *Muhammad Taqi*, I. L. R. 14 All. 350, dissented from. WAZIR *v.* DHUMAN KHAN.

[16 All. 65

29.—*Two mortgages between the same parties over the same property—Right to redeem one without the other—Tacking—Transfer of Property Act (IV of 1882), ss. 61 and 62—Statute 44 and 45 Vict. cap. 41, s. 17.*] A mortgagee held two mortgages over the same property from the same mortgagor, the one being a usufructuary mortgage in respect of interest only, and the other being a simple mortgage. The mortgagor sued to redeem the usufructuary mortgage. The mortgagee objected that the mortgagor was bound to redeem both mortgages:—*Held*, that the mortgagor had the right to redeem one mortgage without redeeming the other, and that, in the absence of a special contract to redeem both mortgages simultaneously, he could not be compelled to redeem them both lost. *Vithal Mahadev* v. *Daud valad Muhammad Husen*, 6 Bom. A. C. 905, dissented from; *Shuttleworth* v. *Laycock*, 1 Vern. 245; and *Jennings* v. *Jordan*, L. R. 6 Ap. Cas. 698, referred to. TAJJO BIBI *v.* BHAGWAN PRASAD.

[16 All. 295

30.—*Right of mortgagor making default in payment of mortgage-money at time fixed by decree for redemption—Transfer of Property Act (IV of 1882), ss. 87, 89, 92 and 93.*] A mortgagor who has made default in payment of the mortgage-money within the time limited by the decree in a suit for redemption is not entitled to apply for execution of the decree after the time limited. VALLABHA VALIYA RAJA *v.* VEDAPURATTI.

[19 Mad. 40

31.—*Mortgage with possession—Sale for arrears of revenue caused by default of mortgagee—Subsequent suit by mortgagor for redemption where mortgagee has become the purchaser.*] Where mortgaged property was sold at a Government sale for arrears of revenue:—*Held*, that if the sale took place owing to the mortgagee's default, it would not affect the mortgagor's right to redeem. The general rule, that a Government sale for arrears of revenue gives a title against all the world, is subject to the exception that if it is caused by the default of a mortgagee, it does not take away the mortgagor's right to redeem the mortgage to recover the land. KALAPPA *v.* SHIVAYA.

[20 Bom. 492

32.—*Rights of redemption and foreclosure—Power expressly given to the mortgagee to call in his money before the expiry of the term, Effect*

MORTGAGE —*continued.*

(7) REDEMPTION—*continued.*

(a) RIGHT OF REDEMPTION—*continued.*

of, on right to redeem — Limitation put on right to redeem — Agreement restraining the right of redemption.] The right of redemption and the right of foreclosure are always co-extensive, and from the postponement of the former the Court will infer an intention to postpone the latter in the absence of express provision on the point; where there is such express provision, giving the mortgagee power to foreclose at any time, any stipulation postponing the mortgagor's right to redeem is unilateral and void of consideration. A Court of equity will not enforce any agreement in restraint of the right of redemption which is oppressive and unreasonable as giving the mortgagee an advantage not belonging to the contract of mortgage. A mortgagor cannot, by any contract entered into with the mortgagee at the time of the mortgage, give up his right of redemption or fetter it in any manner by confining it to a particular time or a particular description of persons. ABDUL HAK *v.* GULAM JILANI.

[20 Bom. 677

33.—*Transfer of Property Act (IV of 1882), s. 91—Right of lessee from ottidar to redeem.*] A *verumpattom* tenant in Malabar claiming under a lease from the *ottidar* is entitled to redeem the prior *kanom*. PAYA MATATHIL APPU *v.* KOVAMEL AMINA.

[19 Mad. 151

34.—*Suit by legitimate son of illegitimate member of the family to redeem a mortgage made by a previous legitimate owner.*] The right of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right and does not descend to his son:—*Held*, that the legitimate son of an illegitimate member of a Hindu family, who, as such illegitimate son, might have had a right to maintenance from the property of his father, had no such interest in the estate belonging to the family as would entitle him to redeem a mortgage made by a previous rightful and legitimate owner of the estate. BALWANT SINGH *v.* ROSHAN SINGH.

[18 All. 253

35.—*Decree giving a defendant, second mortgagee, a right to redeem a prior mortgage within a fixed period—Effect of appeal—Limitation.*] When a decree gives a right of redemption within a certain specified period with a certain specified result to follow, if redemption is not made within such period, the mere fact of an appeal being preferred against it will not suspend the operation of such decree, and, unless the Appellate Court extends the period limited by the original decree, the right of redemption will be barred if not exercised within the period so limited. The principle in *Jaggar Nath Pande* v. *Jokhu Tewari*, I. L. R. 18 All. 223, applied. CHIRANJI LAL *v.* DHARAM SINGH.

[18 All. 455

MORTGAGE—*continued.*

(7) REDEMPTION—*continued.*

(a) RIGHT OF REDEMPTION—*continued.*

36.—*Transfer of Property Act (Act IV of 1882), ss. 87, 89 and 92 — Execution of decree for redemption — Extension of time limited for payment of decretal amount.*] In the case of a decree for redemption or for foreclosure under the Transfer of Property Act, 1882, both of which decrees stand in this respect upon the same footing, no extension of the time limited by the decree for payment of the decretal amount can be made except for good cause shown, whether the order under s. 87, in a suit for foreclosure or the order under s. 93, in a suit for redemption, has been applied for or not. *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar*, I. L. R. 16 Calc. 246, dissented from; *Kanara Kurup* v. *Govinda Kurup*, I. L. R. 16 Mad. 214, distinguished. RAM LAL *v.* TULSA KUAR.

[19 All. 180

See RAJARAM SIRGJI *v.* CHUNNI LAL.

[19 All. 205

37.—*Mortgagee taking other land in exchange for mortgaged land—Right of mortgagor to redeem land so taken in exchange—Fraud—Forest Act (VII of 1878), s. 10, cl. (d)—Bombay Land Revenue Code (Bombay Act V of 1879), s. 56.*] In 1876 *B* mortgaged certain land (Survey Nos. 51 and 52) to *S*, who died, and his brother *G* succeeded him. The Forest Department being desirous of acquiring the mortgaged land entered into negotiations with *G*, who admitted that he was only a mortgagee. *B* (the mortgagor) had left the village and could not be found. Under these circumstances, it was arranged that *G* should allow the assessment to fall into arrear, upon which Government would forfeit the holding, and that *G* should receive other land (Survey No. 105) in exchange. This arrangement was actually carried out; *G* received Survey No. 105 in exchange for the mortgaged land. In the order giving the land in exchange, *G* was styled mortgagee The heir of *B* (the mortgagor) subsequently brought this suit to redeem Survey No. 105 from the mortgage of 1876. The defendant contended that this land was not subject to the mortgage, and that by the exchange *G* had acquired the full ownership in it:—*Held*, that the plaintiff was entitled to redeem Survey No. 105. The mortgagee, *G*, had lost the mortgagor's equity of redemption in the mortgaged land by fraud, and the land (Survey No. 105) which he obtained in exchange was therefore subject to the mortgage. He held the equity of redemption in this land as trustee for the mortgagor. BABAJI *v.* MAGNIRAM.

[21 Bom. 396

38.—*Transfer of Property Act (IV of 1882), ss. 92 and 93—Decretal money not paid within the time limited—Second suit for redemption—Civil Procedure Code, s. 13—Res judicata—Right of suit.*] *Held*, that a mortgagor, whether under a simple or a usufructuary mortgage, who has obtained a decree for redemption and allows such decree to lapse by reason of his not paying in the decretal

MORTGAGE—*continued.*

(7) REDEMPTION—*continued.*

(*a*) RIGHT OF REDEMPTION—*concluded.*

amount within the time limited for payment by the decree, cannot subsequently bring a second suit for redemption of the mortgage in respect of which such infructuous decree was obtained. *Golam Hoosein* v. *Alla Rukhee Beebee*, 3 N. W. 62; and *Malvji* v. *Sagaji*, I. L. R. 13 Bom. 567, followed. *Hari Ravji Chiplunkar* v. *Shapurji Hormasji Shet*, I. L. R. 10 Bom. 461, referred to. *Muhammad Samiuddin Khan* v. *Mannu Lal*, I. L. R. 11 All. 386; *Sami Achari* v. *Somasundram Achari*, I. L. R. 6 Mad. 119; *Periandi* v. *Angappa*, I. L. R. 7 Mad. 423; and *Ramunni* v. *Brahma Datton*, I. L. R. 15 Mad. 366, dissented from. HAY *v.* RAZI-UD-DIN.

[19 All. 202

(*b*) REDEMPTION OF PORTION OF PROPERTY.

39.—*Breaking up security—Mortgagee allowing mortgagor to pay a portion of the mortgage-debt and releasing part of the mortgaged property—Transfer of Property Act (IV of 1882), s. 60.*] A mortgagee by allowing his mortgagor to pay a portion of the mortgage-debt and releasing a proportionate part of the mortgaged property does not thereby entitle the mortgagor or his representative to redeem the rest of the mortgaged property piece-meal. *Marana Ammanna* v. *Pendyala Perubotulu*, I. L. R. 3 Mad. 230; and *Subramanyan* v. *Mandayan*, I. L. R. 9 Mad. 453, not followed. LACHMI NARAIN *v.* MUHAMMAD YUSUF.

[17 All. 63

40.—*Subsequent mortgage of same land—Decree on first mortgage—Effect of sale in execution of some of mortgaged land and purchase by subsequent mortgagees subject to their own mortgage—Subsequent suit by mortgagors for redemption of lands other than those sold—Apportionment of mortgage-debt.*] In 1874, plaintiffs mortgaged to one *S* seven fields, of which four were Survey Nos. 22, 23, 40 and 41. In 1876, they mortgaged these same four fields with other lands to the defendants. In 1877, *S* obtained a decree upon his mortgage, and in execution sold only Nos. 22, 23 and 41, which realised sufficient to satisfy his decree. These three fields were, on the application of the defendants, sold subject to their mortgage, and they themselves purchased them at the sale. The plaintiffs now sued to redeem the remaining lands comprised in the mortgage of 1876, exclusive of those which had been sold in execution:—*Held*, that they were entitled to redeem this part of the mortgaged property, as the mortgagees had themselves acquired the plaintiffs' (mortgagors') interest in the other part and so severed their claim under the mortgage:—*Held*, also, that the plaintiffs were entitled to redeem on payment of such portion of the mortgage-debt as remained after deducting the portion of it to which the lands purchased by defendants were liable. PIRJADA AHMADMIYA PIRMAYA *v.* SHA KALIDAS KANJI.

[21 Bom. 544

MORTGAGE—*continued.*

(7) REDEMPTION—*concluded.*

(*b*) REDEMPTION OF PORTION OF PROPERTY—*concluded.*

41.—*Mortgage to co-sharer—Right of one or more co-owners to redeem in absence of partition.*] When several owners of an undivided share in immoveable property mortgage their share with possession to another undivided sharer, a smaller number than the whole body of co-mortgagors cannot sue to redeem the whole mortgage until there has been a partition of the property mortgaged among the several co-owners. *Marakar Akath Kondarakayil Mamu* v. *Punjapatath Kuttu*, I. L. R. 6 Mad. 61, followed; *Naro Hari Bhave* v. *Vithalbhat*, I. L. R. 10 Bom. 648, distinguished. THILLAI CHETTI *v.* RAMANATHA AYYAN.

[20 Mad. 295

(*c*) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

42.—*Agreement in a subsequent deed to postpone redemption until payment of another debt.*] An agreement contained in a deed executed for a fresh consideration subsequent to a mortgage-deed to postpone redemption of the mortgage until the payment of another debt which has not been made a charge on the land, is valid. KRISHNAJI *v.* MAHESHVAR LAKSHMAN GONDHALEKAR.

[20 Bom. 346

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

43.—*Decree for foreclosure giving future interest—Effect of as charging mortgaged property—Transfer of Property Act (IV of 1882), s. 86—Civil Procedure Code, s. 209.*] Where in a decree for foreclosure interest subsequent to the decree was included in the amount made payable to the plaintiff, it was *held* that such future interest, supposing it could be properly awarded, concerning which no opinion was expressed, could not be treated as a charge upon the land; but the judgment-debtor was entitled to resist foreclosure on payment within the prescribed period of the mortgage money and interest up to date of decree, the decree-holder being at liberty to recover the future interest only from the judgment-debtor personally. BHAWANI PRASAD *v.* BRIJ LAL.

[16 All. 269

See RAJ KUMAR *v.* BISHESHAR NATH.

[16 All. 270

(8) FORECLOSURE.

(*a*) RIGHT OF FORECLOSURE.

44.—*Bengal Regulation XVII of 1806, s. 8—Stipulated period—Mortgage by conditional sale.*] The term "stipulated period," as used in s. 8 of Bengal Regulation XVII of 1806, means the full term on the expiry of which the mortgage money is payable, notwithstanding that under the strict terms of the mortgage the mortgagee might be entitled to foreclose at an earlier period.

MORTGAGE —*continued.*

(8) FORECLOSURE—*continued.*

(*a*) RIGHT OF FORECLOSURE—*concluded.*

Sarasibala Debi v. *Nand Lal Sen*, 5 B. L. R. 389; and *Imdad Husain* v. *Mannu Lal*, I. L. R. 3 All. 509, referred to. KUBRA BIBI *v.* WAJID KHAN.

[16 All. 59

45.—*Bengal Regulation XVII of* 1806, *s.* 8 — *Mortgage by conditional sale — Meaning of stipulated period—Petition for foreclosure prematurely filed—Continuance of right to redeem—Construction of clause accelerating payment.*] Under s. 8 of Bengal Regulation XVII of 1806 the right of the mortgagee by conditional sale to petition for foreclosure does not arise until the period stipulated in the proviso for redemption has expired. That period is not affected, or altered, by a contract in the deed of mortgage, making, without reference to redemption, the whole principal lent become due upon failure to pay interest at a certain time. In a mortgage, by conditional sale in the English form the proviso for redemption was that, on repayment of the principal lent, with interest, in three years from the date of the mortgage, the land should be reconveyed to the mortgagor. The deed also contained a covenant that, upon any default in payment of the interest half-yearly, the whole principal and interest should become due. Upon such default made the mortgagee filed his petition, under s. 8, for foreclosure, before the three years had passed; and payment not having been made during the year of grace, the mortgagor's objection was disregarded by the Court, and the conditional sale treated by the mortgagee as having become conclusive:—*Held*, that the covenant accelerating, for other purposes, the time at which the principal should become due, making no provision for the payment of the principal by the mortgagor in order to prevent foreclosure, nor referring to the proviso for redemption, could not be taken into account in determining what was to be regarded as the "stipulated period" which remained as stated in the proviso. Thus the petition had been prematurely filed. The 8th section of the Regulation had not been called into operation, and the right to redeem remained. *Sarisibala Debi* v. *Nand Lal Sen*, 5 B. L. R. 389; 13 W. R. 364; and *Wooma Churn Chowdhry* v. *Beharee Lall Mookerjee*, 21 W. R. 274, referred to and approved. KISHORI MOHUN ROY *v.* GANGA BAHU DEBI.

[23 Calc. 228

[L. R. 22 I. A. 183

(*b*) DEMAND AND NOTICE OF FORECLOSURE.

46.—*Bengal Regulation XVII of* 1806, *s.* 8—*Procedure—Mortgage by conditional sale—Demand of payment — Parwanah—"Official signature."*] In proceedings for foreclosure of a mortgage under Bengal Regulation XVII of 1806, it is not necessary that the fact that a demand for payment was made before the petition for foreclosure was presented should appear on the face of the proceedings; it is sufficient if

MORTGAGE—*continued.*

(8) FORECLOSURE—*concluded.*

(*b*) DEMAND AND NOTICE OF FORECLOSURE—*concluded.*

the plaintiff in his suit for possession shows that the demand was so made. *A parwanah* issued under the provisions of s. 8 of the abovementioned Regulation is not signed as required by that section with the "official signature" of the Judge when it bears merely the initials of that officer. *Madho Persad* v. *Gajudhar*, I. L. R. 11 Calc. 111, referred to. KUBRA BIBI *v.* WAJID KHAN.

[16 All. 59

(9) ACCOUNTS.

47.—*Cost of improvements on property—Transfer of Property Act (IV of* 1882), *s.* 63—*Right of prior mortgagee to add to the amount secured by his mortgage outlay incurred by him in the preservation of the property mortgaged.*] Where a mortgagee of agricultural land had, with the consent of his mortgagors, spent money in repairing a well on the property which had been rendered useless from natural causes, it was *held* that such mortgagee was entitled, in a suit by a subsequent mortgagee against him for redemption, to add the amount so expended to the mortgage-debt to be paid by the plaintiff before he could obtain the decree for redemption claimed by him. DURGA SINGH *v.* NAURANG SINGH.

[17 All. 282

48.—*Compound interest on money spent to protect property—Interest on money expended on improvements on property.*] In a suit on a mortgage by conditional sale the mortgagee was *held* to be not entitled to compound interest upon the sum spent by him to protect the subject of the security, nor to interest upon the money expended by him in its improvement. KISHORI MOHUN ROY *v.* GANGA BAHU DEBI.

[23 Calc. 228

[L. R. 22 I. A. 183

49.—*Right of mortgagee in possession to execute repairs—Cost of improvements on redemption—Transfer of Property Act, s.* 72.] Transfer of Property Act, s. 72 (*b*), does not permit a mortgagee in possession to effect improvements. Consequently in a suit for redemption the costs of such improvements cannot be legally charged against the mortgagor seeking to redeem. ARUNACHELLA CHETTI *v.* SITHAYI AMMAL.

[19 Mad. 327

50.—*Value of improvements on redemption, Depreciation of, between decree and date of redemption.*] A decree for the redemption of a *kanom* in Malabar was passed in December, 1894, when there were on the land improvements in the form of trees, &c., to the value of Rs. 1,429. Within the six months limited by the decree for redemption, the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees to the value of Rs. 157. The loss was the result of want of water

MORTGAGE —*concluded.*

(9) ACCOUNTS—*concluded.*

and was not attributable to neglect on the part of the mortgagee:—*Held*, that the loss should fall on the mortgagee. KRISHNA PATTER *v.* SRINIVASA PATTER.

[20 Mad. 124

51.—*Purchase of mortgaged property by decree-holder for inadequate price—Right of purchaser—Improvements. Right to value of, on redemption.*] A mortgaged land to *B*, and then to *C*. *B* sued on his mortgage and obtained a decree for sale without joining as defendant *C*, of whose mortgage he had notice; *D*, the son of the decree-holder, became the purchaser in execution and improved the land at a considerable cost. *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage, and sought a decree for sale:—*Held*, that the purchaser was not entitled to allowances for improvements. RANGAYYA CHETTIAR *v.* PARTHASARATHI NAICKAR.

[20 Mad. 120

MORTGAGEE.

See CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUIT.

[16 All. 284

——, Acknowledgment by.

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

[18 All. 458

——, Effect on, of order against mortgagor.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

—— not party to suit, Liability of, for costs.

See COSTS—SPECIAL CASES—PARTITION.

[21 Calc. 904

——, Possession of.

See MAMLATDAR, JURISDICTION OF.

[19 Bom. 289

——, Rights of.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[18 Bom. 684

MORTGAGOR AND MORTGAGEE.

See ESTOPPEL—DENIAL OF TITLE.

[18 All. 329

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Bom 51

MORTGAGOR AND MORTGAGEE —*concluded.*

See CASES UNDER MORTGAGE.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

MOSQUE, MANAGEMENT OF.

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

MOVEABLE PROPERTY.

See ATTACHMENT — ATTACHMENT BEFORE JUDGMENT.

[16 All. 186

See CRIMINAL BREACH OF TRUST.

[23 Calc. 372

See PERPETUITIES, RULE AGAINST.

——, Disposition of.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

[21 Bom. 170

——, Suit on pledge of.

See LIMITATION ACT, ART. 57.

[22 Calc. 21
[17 All. 284

MULTIFARIOUSNESS.

See JOINDER OF CAUSES OF ACTION.

[17 All. 274

1.—*Misjoinder of causes of action—Misjoinder of parties—Civil Procedure Code* (1882), *ss.* 28, 31, 373 *and* 378—*Error not affecting merits of suit—Withdrawal of suit—Meaning of "cause of action."*] Where a plaintiff, alleging himself to be entitled on the death of a Hindu widow to the possession of certain immoveable property upon the death of such widow, brought a joint suit against three sets of defendants, being persons to whom the widow in her lifetime had by separate alienations transferred separate portions of the property claimed:—*Held*, that such suit was bad for misjoinder of both parties and causes of action, and that s. 578 of the Code of Civil Procedure could not be applied to cure the defect: but the plaintiff was allowed on terms to withdraw his suit as against two out of the three sets of defendants with liberty to bring a fresh suit on the same cause of action. *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*, 7 Mad. 290; *Banee Krishun* v. *Koondun Lal*, 2 N. W. 221; *Koondun Lal* v. *Himmut Singh*, 3 N.-W. 86; *Narsingh Das* v. *Mangal Dubey*, 1. L. R. 5 All. 163; *Kachar Bhoj Vaija* v. *Bai Rathore*, I L. R. 7 Bom. 289; *Sudhendu Mohun Roy* v. *Durga Das*, I. L. R. 14 Calc. 435; and *Ram Narain Dut* v. *Annoda Prosad Joshi*, I. L. R. 14 Calc. 681, referred to. GANESHI LAL *v.* KHAIRATI SINGH.

[16 All. 279

MULTIFARIOUSNESS—*continued.*

2.—*Misjoinder of causes of action—Civil Procedure Code* (1882), *ss.* 31, 45 *and* 53—*Return of plaint.*] The term "cause of action" as used in ss. 31 and 45 of the Code of Civil Procedure is there used in the same sense as it is used in English law, *i.e.*, a cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Where three plaintiffs brought a joint suit for the possession of immoveable property, in which two of them were claiming half the property under a title by inheritance, and the third was claiming the other half of the property in virtue of a sale thereof to him by the first two plaintiffs, *held* that the suit so framed was bad for misjoinder of causes of action, and that the plaint should be returned, that the plaintiffs might elect which of them should proceed with the suit. *Jugobundhoo Dutt* v. *Maseyk*, W. R. (1864), 81; *Annund Chunder Ghose* v. *Komul Narain Ghose*, 2 W. R. 219; *Prem Shook* v. *Bheekoo*, 3 Agra 242; *Cook* v. *Gill*, L. R. 8 C. P. 107; *Read* v. *Brown*, L. R. 22 Q. B. D. 128; *Smurthwaite* v. *Hannay*, L. R. (1894) A. C. 494; *Chand Kour* v. *Partab Singh*, I. L. R. 16 Calc. 98; L. R. 15 I. A. 156; *Murti* v. *Bhola Ram*, I. L. R. 16 All. 165; *Nusserwanji Merwanji Panday* v. *Gordon*, I. L. R. 6 Bom. 266; *Ramanuja* v. *Devanayaka*, I. L. R. 8 Mad. 361; and *Ram Sewak Singh* v. *Nakched Singh*, I. L. R. 4 All. 261, referred to. SALIMA BIBI *v.* MUHAMMAD.

[18 All. 131

3.—*Misjoinder of causes of action—Suit by one plaintiff claiming by inheritance and another claiming as assignee from the first—Civil Procedure Code, ss.* 31, 45 *and* 53.] Where two plaintiffs joined in a suit for the recovery of immoveable property, the one claiming a title by inheritance and the other a title by assignment from the first plaintiff, it was *held* that the suit was bad for misjoinder of causes of action. *Salima Bibi* v. *Muhammad*, I. L. R. 18 All. 131, followed. RAHIM BAKHSH *v.* AMIRAN BIBI.

[18 All. 219

4.—*Misjoinder of causes of action and of parties—Civil Procedure Code, s.* 53—*Suit to set aside deed in fraud of creditors—Amendment of plaint.*] *Held* that several creditors, to each of whom separate debts were owing by the same debtor, could not sue jointly for the avoidance of a deed of gift executed by the debtor, which deed was alleged to have been made fraudulently with intent to defeat or delay the executant's creditors, the cause of action of each separate creditor not being the same as that of the others. RAJJO KUAR *v.* DEBI DIAL.

[18 All. 432

5.—*Suit for ejectment—Suit against several defendants—Parties, Joinder of—Cause of action.*] In a suit for ejectment against several defendants who set up various titles to different parts of the land claimed there is only one cause of action, not several distinct and separate causes of action. *So held*, setting aside the decree of the District Judge who had dismissed the suit for misjoinder of causes of action. ISHAN CHUNDER HAZRA *v.* RAMESWAR MONDOL.

[24 Calc. 831

MULTIFARIOUSNESS—*concluded.*

6.—*Misjoinder of causes of actions—Joinder of several plaintiffs in respect of separate causes of action—Contribution, Suit for—Civil Procedure Code* (1882), *s.* 578—*Irregularity affecting merits.*] The plaintiffs, who were husband and wife, brought a suit to recover a certain sum of money, part of which was alleged to have been paid by plaintiff No. 1, who was a co-sharer with the defendants in two *patnis* to save the *patnis* from being sold for arrears of rent; and the remainder by plaintiff No. 2 who alleged that she had a subordinate *miras taluk* under the two *patnis* granted to her by plaintiff No. 1, and that the sale would have resulted in the cancellation of her *miras taluk*. In appeal it was contended by the respondents, in support of the decree made by the Court below dismissing the claim of plaintiff No. 2, that the claim was liable to dismissal by reason of its involving the misjoinder of plaintiffs with different causes of action. This objection had been raised in the written statement, and the Court was asked to raise an issue on the point. In answer to this contention it was urged by the appellants that, as the respondents went to trial upon the merits, it was not open to them to urge any objection like this to the frame of the suit on appeal:—*Held*, that the suit was bad for misjoinder of plaintiffs, as the suit of plaintiff No. 2 ought properly to have been brought against all the holders of the *patnis*, including plaintiff No. 1, and not merely against the defendants in the suit:—*Held*, further, that it was open to the respondents to raise the objection as to misjoinder in appeal. *Tarince Churn Ghose* v. *Hunsman Jha*, 20 W. R. 240, distinguished; *Smurthwaite* v. *Hannay*, L. R. (1894), A. C. 494, referred to. MOHIMA CHANDRA ROY CHOWDHRY *v.* ATUL CHANDRA CHAKRAVARTI CHOWDHRY.

[24 Calc. 540

MUNICIPAL BOARD.

——, Power of.

See N.-W. P. AND OUDH MUNICIPALITIES ACT, 1883, S. 55.

[19 All. 313

——, Secretary of.

See STAMP ACT, SCH. I, ART. 22.

[19 All. 293

MUNICIPAL COMMISSIONER, ELECTION OF.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[22 Calc. 717

MUNICIPAL COMMISSIONER, ELECTION OF—*concluded.*

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

[24 Calc. 107

——, Order of District Judge as to.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[21 Bom. 279

MUNICIPAL COMMISSIONERS, POWER OF, TO INSTITUTE PROCEEDINGS UNDER PENAL CODE.

See BENGAL MUNICIPAL ACT, 1884, S. 133.

[22 Calc. 131

MUNICIPALITY.

——, Chairman of.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[23 Calc. 44

——, Notice to.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 33.

[21 Bom. 187

——, Suit against.

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, S. 48.

[18 Bom. 19

——, Suit by.

See LIMITATION ACT, ART. 149.

[19 Mad. 154

MUNSIF, JURISDICTION OF.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &C.

[17 Mad. 309
[22 Calc. 764

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.

[18 Mad. 257

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[16 All. 11

See VALUATION OF SUIT—SUITS.

[22 Calc. 692
[24 Calc. 661

MUNSIF, JURISDICTION OF—*contd.*

1.—*Decree containing order for ascertainment of mesne profits from date of suit to date of recovery of possession—Effect on jurisdiction of such mesne profits added to amount of decree exceeding jurisdiction of the Munsif—Valuation of suit.*] A suit, valued at Rs. 950, was brought in the Munsif's Court to recover possession of certain lands on the ground of illegal dispossession. No mesne profits up to date of suit were claimed, but the plaint prayed that such mesne profits from date of suit to recovery of possession, as might be ascertained in execution of decree, should be awarded to the plaintiff. The Munsif gave a decree in accordance with the prayer of the plaint. The plaintiff then asked that the mesne profits might be assessed, and in his petition he roughly estimated them at Rs. 1,595, and thereupon it was held both by the Munsif, and on appeal by the District Judge, that the Munsif had no jurisdiction, as he could not give a decree for more than Rs. 1,000:—*Held*, on appeal to the High Court, that the Munsif had jurisdiction to ascertain the mesne profits, and to give effect to the order made in his decree in the suit, notwithstanding that the amount to such mesne profits, when added to the value of the suit, might come to a sum in excess of the pecuniary jurisdiction of his Court RAMESWAR MAHTON *v.* DILU MAHTON.

[21 Calc. 550

2.—*Provincial Small Cause Courts Act (IX of 1887), s. 23—Jurisdiction of Small Cause Court to return a plaint for presentation to an ordinary Civil Court when the title of the plaintiff is questioned—Suit for damages for use and occupation—Code of Civil Procedure (1882), ss. 646A and 646B.*] In a suit for damages on account of use and occupation of land brought in a Court of Small Causes, exception was taken to the plaintiff's title. The plaint was returned by the Judge, under s. 23 of the Provincial Small Cause Courts Act (IX of 1887), for presentation in the ordinary Civil Court, and it having been presented to the Munsif, he tried the suit, and passed a decree in favour of the plaintiff. On appeal, the Subordinate Judge reversed that decree, holding that the Munsif had no jurisdiction to try the suit:—*Held*, that under s. 23 of the Provincial Small Cause Courts Act the order of the Small Cause Court Judge was regularly made, and the Munsif had therefore jurisdiction to entertain the plaint. *Semble:* Having regard to the provisions of ss. 646A and 646B of the Code of Civil Procedure, it is doubtful whether the Appellate Court would have been right in dismissing the suit for want of jurisdiction, even supposing that the order made under s. 23 of the Provincial Small Cause Courts Act had not expressly conferred jurisdiction upon the Munsif. MAHAMAYA DASYA *v.* NITYA HARI DAS BAIRAGI.

[23 Calc. 425

3.—*Suit for share of undivided property—Madras Civil Courts Act (Madras Act III of 1873), s. 12—Suits Valuation Act (VII of 1887), s. 8.*] Persons entitled to a share in certain lands of a village only part of which was held in severally, executed a mortgage of part of the lands due to their share. The mortgage contained a description of the land comprised therein

MUNSIF, JURISDICTION OF—*contd.*

by *paimash* numbers and admeasurement. The mortgaged property was brought to sale in execution of a mortgage decree and was purchased by the present plaintiff. The plaintiff now sued for the apportionment and possession of the share to which he was entitled, and stated the value of the suit to be the value of the share claimed by him, *viz.*, Rs. 1,870, and not that of the entire property. The defendants were the mortgagors and the other persons interested in the land, their respective shares not having been ascertained and demarcated:—*Held*, that the suit was within the jurisdiction of a District Munsif. CHAKRAPANI ASARI *v.* NARASINGA RAU.

[19 Mad. 56

4.—*Civil Procedure Code* (1882), *s.* 17—*Provincial Small Cause Courts Act* (*IX of* 1887), *s.* 16—*Suit which may be filed in more than one of several Courts—Choice of forum.*] Where a suit may be filed in more than one of several Courts, it is a general principle of law that the plaintiff may select the *forum* in which to bring the suit. Where a plaintiff sued in a District Munsif's Court, having jurisdiction at the place where the money due under a contract was to be paid, there being no Small Cause Court having jurisdiction at such place:—*Held*, that the jurisdiction of the District Munsif was not ousted by the fact that there was in existence at the date of suit a Small Cause Court having jurisdiction at the place where the contract was made. RATNAGIRI PILLAI *v.* VAVA RAVUTHAN.

[19 Mad. 477

5.—*Jurisdiction to execute decree passed by him in Small Cause Court case after his powers as Small Cause Court Judge have been withdrawn—Civil Procedure Code, s.* 649—*Provincial Small Cause Courts Act* (*IX of* 1887), *s.* 35 (1)—*Madras Civil Courts Act* (*Madras Act III of* 1873), *s.* 28.] Under Madras Act III of 1873, s. 28, a Munsif was invested with the powers of a Small Cause Court's Judge for the trial of suits cognizable by such Court up to Rs. 200 in value. Subsequent to decree but prior to execution, his powers as Small Cause Court's Judge were withdrawn by notification in the Gazette:—*Held*, that application for execution must be made to the Court in which the Small Cause Court's jurisdiction vested at the date of the application. ZEMINDAR OF VALLUR AND GUDUR *v.* ADINARAYUDU.

[19 Mad. 445

6.—*Civil Procedure Code* (1882), *ss.* 470 *and* 622—*Interpleader suit — Claim for compensation awarded under Land Acquisition Act—Provincial Small Cause Court Act* (*IX of* 1887)—*Superintendence of High Court.*] Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at Rs. 468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under the Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under s. 622, Civil Procedure Code:—*Held*, that the interpleader suit was not within the jurisdiction of a Provincial Small Cause Court, and was rightly brought on the ordinary side of the District Munsif's Court, and consequently where the petitioner's remedy was by way of second appeal the petition for revision was not admissible. TIRUPATI RAJU *v.* VISSAM RAJU.

[20 Mad. 155

7.—*Village Munsif—Madras Village Courts Act* (*Madras Act I of* 1889), *s.* 13 (3)—"*Land*," *Meaning of—Suit for rent of house.*] In Madras Act I of 1889, s. 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent unless due under a written contract signed by the defendant is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA.

[20 Mad. 21

MURDER.

See CULPABLE HOMICIDE.

[18 All. 497

See DACOITY.

[16 All. 437
[17 All. 86

See SENTENCE—GENERAL CASES.

[22 Calc. 805

See UNLAWFUL ASSEMBLY.

[22 Calc. 306

See VERDICT OF JURY—GENERAL CASES.

[20 Bom. 215

——, Abetment of.

See JURISDICTION OF CRIMINAL COURT—OFFENCES ONLY PARTLY COMMITTED IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

—*Penal Code* (*Act XLV of* 1860), *s.* 302—*Absence of proof of common intention to cause death.*] Where three prisoners assaulted the deceased and gave him a beating, in the course of which one of the prisoners struck the deceased a blow on the head, which resulted in death:—*Held*, that in the absence of proof that the prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder. QUEEN-EMPRESS *v.* DUMA BAIDYA.

[19 Mad. 483

MUTUAL ACCOUNTS.

See LIMITATION ACT, ART. 85.

[17 Mad. 293

NATIVE CHRISTIANS.

See CONVERTS.

[20 Bom. 53

NATIVE RULER, SUIT AGAINST.

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

[21 Bom. 351

NATIVE STATE, PERSON DOMICILED IN.

See LETTERS OF ADMINISTRATION.

[21 Calc. 911

NAZIR.

——— of mosque.

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

———, Power of.

See PENAL CODE, S. 186.

[22 Calc. 596, 759

NECESSARIES.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[20 Bom. 61

———, Bond executed for.

See MINOR—LIABILITY ON CONTRACTS.

[21 Calc. 872

———, Expenses of legal proceedings as.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[17 Mad. 257

See PLEADER—REMUNERATION.

[17 Mad. 306

NEGLIGENCE.

See CARRIERS ACT, S. 6.

[24 Calc. 786

See CAUSING DEATH BY NEGLIGENCE.

[16 All. 472

See CIVIL PROCEDURE CODE, S. 102.

[22 Calc. 8

———, Contributory.

See ENCROACHMENT.

[17 Mad. 368

NEGLIGENT ACT.

See PUBLIC HEALTH, OFFENCE AFFECTING.

[24 Calc. 494

NEGOTIABLE INSTRUMENTS.

———, Suit on.

See LIMITATION ACT, ART. 159.

[23 Calc. 573

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

See CASES UNDER HUNDI.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[20 Bom. 133

———, ss. 8 and 9.

See PROMISSORY NOTE — ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

[17 Mad. 461

———, s. 13.—*Negotiable instrument—Promissory note—Reference in the note to collateral security, Effect of—Deposit of title-deeds.*] An instrument, signed and bearing a 1-anna stamp, was in the following terms, *viz.*, "on deposit of title-deeds named herein below for value received by me, I promise to pay three months after date Rs. 160 to *A B* or order," then followed the details of the title-deeds: — *Held*, that the instrument was a negotiable instrument. RAMA *v.* SESHA.

[17 Mad. 85

———, s. 46.

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

[17 Mad. 197

———, s. 118.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

[20 Bom. 367

NEW TRIAL.

See CIVIL PROCEDURE CODE, S. 108.

[21 Calc. 269

See EVIDENCE ACT, S. 167.

[19 Bom. 749

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIALS.

See VERDICT OF JURY — POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749

———, Application for.

See PLEADER—APPOINTMENT AND APPEARANCE.

[20 Bom. 293

———, Application for, Statement of case on.

See SMALL CAUSE COURT, PRESIDENCY TOWNS — PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

[20 Mad. 358.

NEXT FRIEND.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[17 All. 531

See LUNATIC.
[19 Bom. 135

See MINOR—REPRESENTATION OF MINOR IN SUITS.
[21 Calc. 866
[17 Mad. 257
[21 Bom. 88

——, Liability of, for costs of proceedings repudiated by minor.

See MINOR—REPRESENTATION OF MINOR IN SUITS.
[17 Mad. 257

——, Negligence of.

See CIVIL PROCEDURE CODE, S. 102.
[22 Calc. 8

——, Suit instituted by.

See PRACTICE—CIVIL CASES—PARTY ATTAINING MAJORITY.
[22 Calc. 270

——, Suit by minor without.

See WAIVER.
[19 Mad. 127

NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873).

——, s. 3, cl. 8.

See DEED—CONSTRUCTION.
[18 All. 388

——, s. 62.

See PRE-EPMTION—CONSTRUCTION OF WAJIB-UL-ARZ.
[17 All. 447

——, s. 64.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[19 All. 452

——, s. 65.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.
[18 All. 129

——, s. 77.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.
[16 All. 209

NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)—*concluded.*

——, s. 113.—*Objection filed after time limited by Court but before action taken under s.* 113.] *Held*, that the provisions of ss. 214 and 219 of Act XIX of 1873 do not apply to an *ex parte* decision of a question of title by a Court of Revenue acting under s. 113 of the said Act:—*Held*, also, that a Court of Revenue acting in partition proceedings under s. 113 of Act XIX of 1873, was not precluded from dealing with an objection brought before it merely by reason of such objection not having been filed within the time limited by the Court for filing objections, the Court not having up to that time taken any action under s. 113 of the said Act. *Muhammad Abdul Karim* v. *Muhammad Shadi Khan*, I. L. R. 9 All. 429, distinguished. TULSI PRASAD *v.* MATRU MAL.
[18 All. 210

——, ss. 113 and 114.

See APPEAL—N.-W. P. ACTS—N.-W. P. LAND REVENUE ACT.
[18 All. 210

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[18 All. 59

——, s. 214.

See APPEAL—N. W. P. ACTS—N.-W. P. LAND REVENUE ACT.
[18 All. 210

——, s. 219.

See APPEAL—N. W. P. ACTS—N.-W. P. LAND REVENUE ACT.
[18 All. 210

——, ss. 222—231.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N.-W. P. LAND REVENUE ACT.
[18 All. 172

——, s. 241.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[18 All. 340
[19 All. 127

——, s. 257.

See PRE-EMPTION—RIGHT OF PRE-EMPTION.
[17 All. 226

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.
[18 All. 290

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*continued.*

1.—s. 7.—*Usufructuary mortgage of zemindari including sir—Losing or parting with proprietary right in a mehal—Ex-proprietary tenant.*] A zemindar who makes a usufructuary mortgage of his zemindari including his *sir* land does not so "lose or part with his proprietary rights" within the meaning of s. 7 of Act XII of 1881 as to become an ex-proprietary tenant of his *sir* land. *Bhagwan Singh* v. *Murli Singh*, I. L. R. 1 All. 459; and *Indar Sen* v. *Naubat Singh*, I. L. R. 7 All. 553, referred to, and the judgments of the minority of the Court, in the latter case approved. *Khiali Ram* v. *Nathu Lal*, I. L. R. 15 All. 219; and *Jarao Bibi* v. *Kifayat Ali Khan*, Weekly Notes, All. (1893) 177, referred to. MADHO BHARTHI *v.* BARTI SINGH.

[16 All. 337

2.—s. 7.—*Ex-proprietary tenant—Ex-proprietary tenancy arising on sale of part of the zemindar's share.*] In order that the provisions of s. 7 of Act XII of 1881 may come into operation, it is not necessary that the zemindar should lose or part with his proprietary rights in respect of the whole of his interest in the *mehal*. BHAWANI PRASAD *v.* GHULAM MUHAMMAD.

[18 All. 121

——, **s. 9.**

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[16 All. 325

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[16 All. 398

See RIGHT OF OCCUPANCY — TRANSFER OF RIGHT.

[17 All. 33

—— **s. 31.**

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[18 All. 354

——, **s. 34.**

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[18 All. 240

—— **s. 36.**

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[19 All. 456

——, **s. 36.**

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[18 All. 270

—— **s. 39.**

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

18 All. 270

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*continued.*

——**s. 42.**—*Assessment of price of crops belonging to an evicted tenant—Effect of such assessment.*] *Held*, that where a land-holder, having ejected a tenant upon whose holding there are growing crops, applies under s. 42, cl. (*c*) of Act XII of 1881, for assessment of the price, he is bound by the assessment which the Revenue Court may make, and cannot afterwards refuse to pay the price fixed. SHAM LAL *v.* CHOKHE.

[19 All. 68

Affirmed on appeal under the Letters Patent. SHAM LAL *v.* CHOKHE.

[19 All. 464

——, **s. 93.**

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—MISCELLANEOUS SUITS.

[16 All. 28, 333

[17 All. 423

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W.-P.

[16 All. 496

See SUBORDINATE JUDGE, JURISDICTION OF.

[16 All. 363

——, **s. 94.**

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—MISCELLANEOUS SUITS.

[16 All. 28, 333

——, **s. 95.**

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W.-P.

[18 All. 340

[19 All. 34, 452, 456

See JURISDICTION OF CIVIL COURT—REVENUE COURTS — ORDERS OF REVENUE COURTS.

[19 All. 101

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[18 All. 270

——, **s. 96.**

See JURISDICTION OF CIVIL COURT—REVENUE COURTS — ORDERS OF REVENUE COURTS.

[19 All. 101

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[18 All. 270

——, **s. 181 and s. 179.**—*Objection dismissed for want of prosecution—Suit to set aside sale—Limitation.*] The limitation provided by s. 181

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*concluded.*

cl. (*b*) of Act XII of 1881 is none the less operative because the order under s. 179 of the Act, in consequence of which a suit has been brought in a Civil Court, may be an order made not on the merits but in default of prosecution of his objection by the objector. *Sardhari Lal* v. *Ambika Pershad*, I. L. R. 15 Calc. 521; L. R. 15 I. A. 123; *Khub Lal* v. *Ram Lochun Koer*, I. L. R. 17 Calc. 260; *Kaminee Debia* v. *Issur Chunder Roy Chowdhry*, 22 W. R. 39; and *Sadut Ali* v. *Ram Dhone Misser*, 12 C. L. R. 43, referred to; *Kallu Mal* v. *Brown*, I. L. R. 3 All. 504, discussed. LUCHMI NARAIN *v.* MARTINDELL.

[19 All. 253

——, s. 185.

See REVIEW—GROUND FOR REVIEW.

[19 All. 522

——, s. 189.

See APPEAL—N.-W. P. ACTS—N.-W. P. RENT ACT.

[16 All. 51
[18 All. 302, 463

——, s. 190.

See APPEAL—ORDERS.

[16 All. 375

——, ss. 206, 207 and 208.

See SUBORDINATE JUDGE, JURISDICTION OF.

[16 All. 363

NORTH-WESTERN PROVINCES AND OUDE ACT (XX OF 1890).

——, s. 42.

See HIGH COURT, JURISDICTION OF—HIGH COURT, N.-W. P.—CIVIL.

[18 All. 375

NORTH-WESTERN PROVINCES AND OUDE MUNICIPALITIES ACT (XV OF 1873).

——, s. 22.

See N.-W. P. AND OUDE MUNICIPALITIES ACT, 1883, S. 55.

[19 All. 313

NORTH-WESTERN PROVINCES AND OUDE MUNICIPALITIES ACT (XV OF 1883).

1.—s. 55, cl. (c).—*Municipal board—Power of municipal boards to frame bye-laws—N.-W. P. and Oude Municipalities Act (XV of 1873), s. 22—Nuisance.*] Clause (c) of s. 55 of Act XV of 1883 was not intended to empower a municipal board to make rules which would enable it to confiscate private rights without making any compensation, or to treat as nuisances acts which are not in law or with regard to public health or convenience capable of being considered nuisances. The clause was meant to give to municipal boards power to make rules for prohibiting the establishment of markets, that is, to prevent new markets being established, and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction. By "maintenance" is meant the keeping up of a market in such a manner as would make it a fit place for the carrying on of a market having regard to public health and public convenience. GANGA NARAIN *v.* MUNICIPAL BOARD OF CAWNPORE.

[19 All. 313

NORTH-WESTERN PROVINCES AND OUDE MUNICIPALITIES ACT (XV OF 1883)—*concluded.*

2.—s. 55.—*Municipal bye-law, Presumption as to validity of*] Where a person was tried for and convicted of a breach of certain bye-laws purporting to have been duly passed by a municipal board, it was *held* that the presumption was that such bye-laws had been passed with due regard to the necessary procedure and were not illegal, and that it lay upon the accused to object to their validity, and was no part of the duty of a Court exercising appellate or revisional jurisdiction to enter of its own motion into the question whether such rules had been properly framed in accordance with the provisions of the law on that subject. *Municipality of Sholapur* v. *Sholapur Spinning & Weaving Co.*, I. L. R. 20 Bom. 732, referred to. QUEEN-EMPRESS *v.* RAM CHANDAR.

[19 All. 493

NOTICE.

See PRACTICE—CIVIL CASES — REPORT OF REGISTRAR.

[24 Calc. 437

See REGISTRATION ACT, S. 50.

[20 Bom. 158
[19 All. 145

See VENDOR AND PURCHASER—NOTICE.

[19 Bom. 391

—— by municipality.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 11.

[20 Bom. 732

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 42.

[19 Bom. 212

See BOMBAY MUNICIPAL ACT, 1888, S. 353.

[19 Bom. 372

NOTICE—*continued.*

——, Constructive.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.
[21 Calc. 116

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS.
[19 Mad. 471

See RES JUDICATA—MATTERS IN ISSUE.
[19 Mad. 145

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.
[24 Calc. 642

—— of appeal.

See APPEAL—ACTS—COMPANIES ACT.
[18 All. 215

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.
[17 All. 438

—— of application.

See CIVIL PROCEDURE CODE, S. 100.
[18 Bom. 59

—— of assignment of debt.

See TRANSFER OF PROPERTY ACT, S. 132.
[21 Bom. 60

—— of attornment.

See REGISTRATION ACT, S. 49.
[19 Bom. 36

—— of decree.

See FOREIGN COURT, JUDGMENT OF.
[19 Mad. 257

—— of dishonour.

See HUNDI.
[20 Bom. 488

—— of enhancement of rent.

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[21 Bom. 394

—— of execution.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[20 Bom. 541

See EXECUTION OF DECREE—NOTICE OF EXECUTION.
[21 Calc. 19

——, Want of.

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.
[21 Bom. 424

NOTICE—*continued.*

—— of hearing.

See PRIVY COUNCIL, PRACTICE OF—REHEARING.
[19 All. 209

—— of mortgage.

See MORTGAGE—MARSHALLING.
[18 Bom. 160
[23 Calc. 790

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[20 Bom. 290

See REGISTRATION ACT, S. 50.
[18 Bom. 332, 444
[16 All. 478

See SALE FOR ARREARS OF RENT—INCUMBRANCES.
[24 Calc. 746

See TRANSFER OF PROPERTY ACT, S. 53.
[22 Calc. 185

—— of sale, Publication of.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[21 Calc. 354

—— of sale, Service of.

See PUBLIC DEMANDS RECOVERY ACT, S. 2.
[21 Calc. 350

—— of suit.

See BOMBAY MUNICIPAL ACT, 1888, S. 298.
[19 Bom. 407

See CIVIL PROCEDURE CODE, S. 424.
[20 Bom. 697
[24 Calc. 584

See MADRAS MUNICIPAL ACT, 1884, S. 433.
[18 Mad. 503

See RAILWAYS ACT, S. 77.
[24 Calc. 306

—— of withdrawal from association.

See COMPANY—WINDING UP—CLAIMS ON ASSETS.
[19 Mad. 85

——, Parties entitled to.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTE AS TO RIGHT OF WAY, WATER, &c.
[21 Calc. 727

NOTICE—*continued.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS

[21 Calc. 915, 916 note

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[18 Bom. 594

——, Service of.

See MADRAS RENT RECOVERY ACT, S. 39.

[18 Mad. 30

—— to quit.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[18 Bom. 110

See CASES UNDER LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[17 Mad. 218
[20 Bom. 354

See SERVICE TENURE.

[22 Calc. 938

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION — RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[18 Bom. 110

—— to quit, Sufficiency of.

See BENGAL TENANCY ACT, S. 155.

[22 Calc. 77

—— to remove obstruction.

See PENAL CODE, S. 188.

[20 Mad. 1

—— to show cause.

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION.

[18 All. 358

NOTIFICATION OF GOVERNOR-GENERAL.

——, No. 1203, dated 23rd September, 1874.

See HIGH COURT, JURISDICTION OF—HIGH COURT, N. W. P.—CIVIL.

[18 All. 375

NOTIFICATION OF GOVERNOR-GENERAL—*concluded.*

——, No. 361, dated 18th April, 1883.

See COURT-FEES ACT, S. 26.

[19 Bom. 145

NUISANCE. *Col.*

1. Under Criminal Procedure Code . 886
2. Public Nuisance under Penal Code ... 887

See BOMBAY DISTRICT POLICE ACT, S. 48.

[19 Bom. 737

See PRESCRIPTION—EASEMENTS—TREES.

[19 Bom. 420

—— under Criminal Procedure Code.

See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

[23 Calc. 499
[18 All. 158

(1) UNDER CRIMINAL PROCEDURE CODE.

1.—*Criminal Procedure Code* (1882), *ss.* 133, 137 *and* 437—*Further inquiry—Jurisdiction of Sessions Judge—Obstruction to public thoroughfare.*] In a complaint for alleged obstruction of a public thoroughfare, the Magistrate, after making preliminary inquiries, was of opinion that the alleged way was not a public thoroughfare, and refused to take action under s. 133 of the Code of Criminal Procedure. The Sessions Judge, being of opinion that the Magistrate should have gone on with the case, directed a further inquiry under s. 133. Such inquiry was held, and the Magistrate, without taking evidence in support of the complaint, made his conditional order under s. 133 absolute under s. 137:—*Held*, that the order of the Sessions Judge, directing a further inquiry, was *ultra vires*, there being no section of the Code under which an order for further inquiry could be made in the case, s. 437 having no application:—*Held*, also, that the Magistrate, before whom the petitioner showed cause, should not have made his conditional order under s. 133 absolute without taking evidence upon the matter of the complaint: the words "evidence in the matter" meaning "in the matter of the complaint," and not simply evidence which the opposite party might offer. SRINATH ROY *v.* AINADDI HALDER.

[24 Calc. 395

2.—*Criminal Procedure Code* (1882), *s.* 144—*Disputed possession of temple—Magistrate, Jurisdiction of.*] The District Temple Committee dismissed the trustees of a certain temple and appointed others. The dismissed trustees retained possession. A breach of the peace having become imminent in the opinion of a Deputy Magistrate, he made an order, under the Criminal Procedure Code, s. 144, directing the newly-appointed trustees not to interfere with the temple or its management:—*Held*, that the Magistrate had

NUISANCE—*concluded.*

(1) UNDER CRIMINAL PROCEDURE CODE—*concluded.*

jurisdiction to make the order, and the High Court declined to interfere on revision. PALANIAPPA CHETTI *v.* DORASAMI AYYAR.

[18 Mad. 402

3.—*Criminal Procedure Code* (1882), *ss.* 133—138—*Procedure.*] Where a claim is raised to the land in respect of which proceedings are taken, the Magistrate, before proceeding further, should satisfy himself as to the *bona fides* of the claim. *Luckhee Narain Banerjee* v. *Ram Kumar Mukerjee*, I. L. R. 15 Calc. 564; and *Queen-Empress* v. *Bissessur Sahu*, I. L. R. 17 Calc. 562, approved of. UPENDRA NATH BHUTTACHARJEE *v.* KHITISH CHANDRA BHUTTACHARJEE

[23 Calc. 499

(2) PUBLIC NUISANCE UNDER PENAL CODE.

4.—*Penal Code* (1860), *ss.* 188 *and* 290—*Cremation—Disobedience to an order duly promulgated by a public servant—Criminal Procedure Code, s.* 143 — *Illegal order.*] On the 11th August, 1894, the District Magistrate promulgated an order prohibiting the people of the village of Thirukodikaval from using their burning grounds situated on the southern bank of the Cauvery, and directing them to use other burning grounds which had been provided. On the 11th May, 1895, certain persons, in defiance of this order, cremated a corpse at the spot interdicted, and were convicted under ss. 188 and 290 of the Penal Code, but the conviction under s. 188 was reversed on appeal:—*Held*, that when persons, entitled to use a particular spot dedicated for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incidental to such an act as it is generally performed in this country, they cannot be convicted of a public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion referred to:—*Held*, further, that the order of the District Magistrate was not warranted by s. 143, Criminal Procedure Code, or by any other law, and must therefore be set aside. QUEEN-EMPRESS *v.* SAMINADHA PILLAI.

[19 Mad. 464

5.—*Penal Code* (1860), *ss.* 268 *and* 283—*Obstruction to public highway.*] Whoever appropriates any part of a street by building over it infringes the right of the public *quoad* the part built over, and thereby commits an offence punishable under the Penal Code, s. 290, if not one punishable under s. 283. QUEEN-EMPRESS *v.* VIRAPPA CHETTI.

[20 Mad. 433

OATHS ACT (X OF 1873).

——, s. 8.—*Oath purporting to affect a third person—Revocation of consent to be bound by statement made on oath taken in a particular form.*]

OATHS ACT (X OF 1873)—*concluded.*

The plaintiff in a civil suit offered to be bound by the statement which the defendant might make on oath holding the arm of his son. The defendant accepted the proposal, took the required oath, and made a statement which had the effect of defeating the plaintiff's claim. When the defendant came into Court to take the oath the plaintiff attempted to revoke his proposal, but alleged no further reason than that he did not understand what he had intended, and did not think the defendant would speak the truth:—*Held*, that the form of oath above indicated ought not, having regard to s. 8 of Act X of 1873, to have been administered; but as it had been administered, and was a form of oath especially binding upon Hindus, the statement made upon it should be accepted:—*Held*, also, that when one party to a suit offers to be bound by the oath of the other party, and such other party accepts the proposal, the party so offering to be bound should not be allowed to revoke his proposal except upon the strongest possible grounds proved to the satisfaction of the Court to be genuine grounds for revoking the proposal. *Lekh Raj Singh* v. *Dulhma Kuar*, I. L. R. 4 All. 302, referred to. RAM NARAIN SINGH *v.* BABU SINGH.

[18 All. 46

——, s. 14.

See FALSE EVIDENCE—GENERALLY.

[19 Mad. 375

OBJECTION.

—— by person not party to decree.

See EXECUTION OF DECREE—PROCEEDINGS IN EXECUTION.

[19 Bom. 544

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[19 Bom. 544

—— by respondent.

See APPEAL—OBJECTIONS BY RESPONDENT.

17 All. 518

See PRIVY COUNCIL, PRACTICE OF—OBJECTIONS BY RESPONDENT.

[23 Calc. 922

—— filed after time.

See N.-W. P. LAND REVENUE ACT, s. 113.

[18 All. 210

—— taken for first time on appeal.

See APPEAL—ORDERS.

[21 Bom. 392

See CASES UNDER APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

OBJECTION—*concluded.*

See FRAUD—ALLEGING OR PLEADING FRAUD.

[18 Bom. 144

See PLAINT—AMENDMENT OF PLAINT.

[18 Bom. 144

See SPECIAL OR SECOND APPEAL—PROCEDURE ON SPECIAL APPEAL.

[18 Bom. 110, 679

[18 Mad. 413

See WAIVER.

[19 Mad. 127

OBJECTS AND REASONS FOR ACT.

See STATUTES, CONSTRUCTION OF.

[21 Calc. 732

[22 Calc. 788

OBSCENE PUBLICATION.

—*Penal Code* (*Act XLV of* 1860), *ss.* 292 *and* 293—"*Obscene*," *Meaning of the word.*] In interpreting the word "obscene" in ss. 292 and 293 of the Penal Code, the Courts may rightly follow *Reg* v. *Hicklin*, L. R. 3 Q. B. 360, where Lord COCKBURN, C. J., says: "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall." Whether a publication is obscene, is a question of fact. QUEEN-EMPRESS *v.* PARASHRAM YESHWANT.

[20 Bom. 193

OBSTRUCTION TO RIGHTS OF PROPERTY.

See CASES UNDER INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

See CASES UNDER RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

OFFENCE COMMITTED ON THE HIGH SEAS.

—*Trial of British seaman for offence committed on a British ship on the high seas—Procedure at such trial—Merchant Shipping Act*, 1854 (17 *and* 18 *Vict. cap.* 104), *s.* 267—*Merchant Shipping Act*, 1855 (18 *and* 19 *Vict. cap.* 91), *s.* 21—*Courts* (*Colonial*) *Jurisdiction Act*, 1874 (37 *and* 38 *Vict. cap.* 27)—*Jurisdiction of Criminal Court.*] The trial of a British seaman for an offence committed on a British ship on the high seas must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under English law. QUEEN-EMPRESS (ON THE PROSECUTION OF THOMSON) *v.* GUNNING.

[21 Calc. 782

OFFICE.

——, Allowance attached to, Deed of gift of.

See REGISTRATION ACT, S. 17.

[18 Bom. 92

——, Intrusion on.

See INJUNCTION—SPECIAL CASES—INTRUSION ON OFFICE.

[21 Bom. 821

——, Religious, Sale of.

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[20 Bom. 495

[19 Mad. 211

See HINDU LAW—PARTITION—PROPERTY LIABLE TO PARTITION.

[20 Bom. 495

——, Suit for.

See LIMITATION ACT, ART. 124.

[17 Mad. 395

OFFICE OR EMOLUMENT.

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

See CASES UNDER RIGHT OF SUIT—OFFICE OR EMOLUMENT.

OFFICER OF CORPORATION OR COMPANY.

See COMPANY—WINDING-UP—LIABILITY OF OFFICERS.

[19 Bom. 88

[18 All. 12

See WRITTEN STATEMENT.

[22 Calc. 268

OFFICER OF GOVERNMENT.

——, Suit against.

See CIVIL PROCEDURE CODE, S. 424.

[20 Bom. 697

[24 Calc. 584

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT, SUITS AGAINST.

[18 Mad. 395

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 754, 773

——, Suit to set aside order of.

See LIMITATION ACT, ART. 14.

[21 Calc. 626

—— with head-quarters in municipality.

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 55.

[17 Mad. 453

OFFICIAL ASSIGNEE.

See INSOLVENCY — AFTER ACQUIRED PROPERTY.

[17 Mad. 21
[18 Mad. 24

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

See PARTIES — PARTIES TO SUITS—OFFICIAL ASSIGNEE.

[22 Calc. 259

——, Power of, to convey.

See INSOLVENT ACT, S. 7.

[19 Mad. 74

OFFICIATOR.

See BOMBAY REVENUE JURISDICTION ACT, S. 4.

[18 Bom. 319

ONUS OF PROOF.

		Col.
1.	Claims to Attached Property	... 892
2.	Damages	... 893
3.	Deed, Effect and Operation of	... 894
4.	Documents relating to Loans, Execution of, and Consideration for	... 894
5.	Ejectment	... 896
6.	Enhancement of Rent	... 896
7.	Hindu Law—Alienation	... 896
8.	Limitation and Adverse Possession	... 899
9.	Possession and Proof of Title	... 900

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 11.

[20 Bom. 732

See BOUNDARY.

[21 Calc. 504
[L. R. 21 I. A. 39

See COMPOUNDING OFFENCE.

[21 Calc. 103

See CONTRACT—WAGERING CONTRACTS.

[17 Mad. 480

See CONVERTS.

[20 Bom. 53

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[20 Bom. 798

See DECREE — FORM OF DECREE — ACCOUNT.

[20 Mad. 313

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[20 Bom. 534

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER.

[21 Bom. 808

ONUS OF PROOF—*continued.*

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS—OF PROOF AS TO JOINT FAMILY.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[19 All. 76
[L. R. 23 I. A. 106

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[19 All. 125

See INSURANCE—LIFE INSURANCE.

[20 Bom. 99

See INVENTIONS AND DESIGNS ACT.

[17 All. 490

See KHOTI SETTLEMENT ACT, S. 20.

[21 Bom. 695

See LANDLORD AND TENANT — PROPERTY IN TREES, WOOD, &C.

[22 Calc. 742, 744 note, 746 note
748 note, 751 note
[23 Calc. 854

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Bom. 51

See PARDANASHIN WOMEN.

[18 Mad. 257
[17 All. 125

See PENAL CODE, S. 373.

[22 Calc. 164

See POSSESSION—EVIDENCE OF TITLE.

[20 Bom. 270, 798

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[17 All. 33

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION, SS. 11 AND 25.

[22 Calc. 473

See STOLEN PROPERTY, OFFENCES RELATING TO.

[20 Bom. 348

See TITLE—EVIDENCE AND PROOF OF TITLE.

[19 Bom. 828

(1) CLAIMS TO ATTACHED PROPERTY.

1.—*Civil Procedure Code* (1882), *ss.* 278, 279 *and* 283—*Objections to attachment—Suit on title under deed of sale to declare property not liable to be taken in execution.*] In proceedings under s. 278 of the Code of Civil Procedure the objector pleaded that the property sought to be attached was his by virtue of a certain registered sale-deed. This objection was disallowed on the finding that the deed relied upon was fictitious. The objector

ONUS OF PROOF—*continued.*

(1) CLAIMS TO ATTACHED PROPERTY—*concluded.*

then brought a separate suit to have the property declared not liable to be taken in execution; but he did not file the sale-deed in question or account for its non-production:—*Held*, that under the circumstances of the case it was in this instance for the plaintiff to prove that the deed he relied on was not fraudulent and collusive, as had been found in the previous proceedings. *Govind Atma* v. *Sankai*, I. L. R. 12 Bom. 270, referred to. RAM NATH *v.* BINDRABAN.

[18 All. 369

(2) DAMAGES.

2.—*Suit for damages for loss of reputation owing to defendant giving false information to Police—Malicious prosecution—Defamation—False charge—Want of reasonable and probable cause—Malice—Privilege—Penal Code (Act XLV of 1860), ss. 182, 211 and 499.*] Certain property belonging to the defendant having been stolen, he informed the chief Police constable entrusted with the inquiry that he suspected the stolen property to be concealed in plaintiff's house. Accordingly the plaintiff's house was searched, and its floor dug up, and the plaintiff was placed in confinement for an hour or so. No property was, however, found. Thereupon the plaintiff sued the defendant to recover damages for loss of character suffered by him in consequence. Both the lower Courts decreed the plaintiff's claim, holding that it lay on the defendant to prove reasonable and probable cause for the suspicion communicated to the Police and the search of the plaintiff's house. On second appeal, the High Court reversed the decrees and dismissed the suit:—*Held* (*per* JARDINE, J.), that the rule as to the burden of proof in suits for malicious prosecution should be extended to a case like the present. The *onus* therefore lay on the plaintiff not only to allege in the plaint, but also to prove against the defendant, malice and absence of reasonable and probable cause for the information given by him to the Police. The plaintiff, however, had given no evidence of his own innocence, nor that the suspicion of the defendant was groundless, nor that the defendant had any malice. *Per* RANADE, J.—The present case was governed by the principles which govern suits for defamation, and under the circumstances the action of the defendant fell within the exception which protects information given to a person in authority in the discharge of a public or private duty, where no malice in fact is shown to exist. See *Mohendro Chundro* v. *Surbo Kokhya*, 11 W. R. 534. There is a distinction between the case of a false charge falling under s. 211 of the Penal Code, and that of false information given to the Police under s. 182. A person prosecuting another for an offence under the latter section need not prove malice and want of reasonable and probable cause, except so far as they are implied in the act of giving information known to the Police with the knowledge or likelihood that such information would lead a public servant to use his power to

ONUS OF PROOF—*continued.*

(2) DAMAGES—*concluded.*

the injury or annoyance of the complainant. In an inquiry under s. 211, on the other hand, the absence of just and lawful ground for making the charge is an important element. *Gunnesh Dutt Sing* v. *Mugneeram Chowdhry*, 11 B. L. R 321; 19 W. R. 283, distinguished. RAGHAVENDRA *v.* KASHINATHBHAT.

[19 Bom. 717

(3) DEED, EFFECT AND OPERATION OF.

3.—*Deeds of gift between joint brothers of part of family estate—Deeds of partition—Subsequent partition between them of residue.*] Two brothers, the only members of a joint Hindu family, executed and registered mutual deeds of gift to one another of their interests in specified portions of their family estate. In after years the younger brother sued the elder for partition of the estate excepting so much of it as had already been the subject of the above gifts. The elder defended the suit on the ground that the deeds of gift had not been intended to operate, not representing any real transaction. To negative their effect, the burden of proving that the transaction was not real but only a pretence was laid upon the defendant who failed to adduce that proof. SHAM CHAND PAL *v.* PROTAP CHUNDER PAL.

[25 Calc. 78

[L. R. 24 I. A. 186

(4) DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

4.—*Mortgage deed—Registration Act (III of 1877), s. 59—Endorsement of certificate by Registrar.*] In a suit brought by a mortgagee upon a mortgage by conditional sale for payment of the mortgage-debt or in default for foreclosure, one of the defendants, not being one of the original mortgagees, but a purchaser at auction sale under a Rent Court decree, resisted the suit and put the plaintiff to proof of the document under which he claimed:—*Held*, that the mere production of the deed of mortgage which had been thus questioned, and the fact that that deed of mortgage contained an endorsement certificate by the Registrar in the usual manner under s. 59 of Act III of 1877, were not sufficient to shift the burden of proof on to the defendants. MANOHAR SINGH *v.* SUMIRTA KUAR.

[17 All. 428

5.—*Promissory note—Proof of consideration—Suit by professional money-lender against a young man recently come of age—Presumption—Negotiable Instruments Act (XXVI of 1881), s. 118—Evidence Act (I of 1872), s. 114, ill. (c).*] Professional money-lenders sued a young man recently come of age to recover certain loans of money alleged to have been advanced by them to him on promissory notes. The defendant, who under the will of his father was entitled to a large property but had not yet come into possession of it, was of an extravagant and reckless character. He pleaded, as to part of the consideration for the notes, that he did not receive it, and

ONUS OF PROOF—*continued.*

(4) DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR—*concluded.*

as to a further part, that the consideration was immoral. In dealing with the case the Court laid down the following propositions, not as rules of law, but as guides in considering the evidence in such a case:—(1) That upon the above facts the ordinary presumption that a negotiable instrument has been executed for value received was so much weakened that the defendant's allegation that he had not received full consideration was sufficient to shift the burden of proof and to throw upon the money-lenders (the plaintiffs) the obligation of satisfying the Court that they had paid the consideration in full. That is the practical effect of ill. (*c*) to s. 114 of the Evidence Act (I of 1872). (2) Where the plaintiff, in answer to such a defence, affirmed that he had paid the consideration in full, and was corroborated by his books and witnesses, the *onus* of proof again shifted over upon the defendant. (3) The burden of proof thus thrown upon the defendant could only be met by a perfectly truthful and harmonious statement which the Court felt able to rely upon with confidence. In the absence of this the ordinary presumption laid down in s. 118 of the Negotiable Instruments Act (XXVI of 1881) must prevail, *viz.*, that until the contrary is proved the presumption should be made that every negotiable instrument was made for consideration. MOTI GULABCHAND *v.* MAHOMED MEHDI THARIA TOPAN.

[20 Bom. 367

6.—*Proof of consideration for a registered mortgage—Income-tax returns—Evidence Act (I of 1872), ss. 76 and 77.*] The defendant in a suit for money secured by registered mortgage to be paid by him to the plaintiff denied the consideration of which he had, before the registering officer, acknowledged the receipt. The original Court, which dismissed the suit, would not have decided in favour of the defendant, but for its having been shown, on an inspection of copies, officially certified, of income-tax returns made by the plaintiff, that he had not stated the interest accruing on the mortgage as part of his income. This judgment was reversed in appeal. The Judicial Commissioner was of opinion that the certified copies should not have been admitted in evidence, in reference to ss. 76 and 77 of the Indian Evidence (Act I of 1872); and also that, assuming the false statement of income to have been made, it still remained unproved by the defendant that the acknowledged consideration had not been paid. The judgment of the Appellate Court was affirmed by their Lordships, who concurred in the opinion that the returns, if the plaintiff had wrongly omitted to make a full return of income, would not have had any weight in changing the *onus* which lay upon the defendant of showing that no consideration had passed for this mortgage. ALI KHAN BAHADUR *v.* INDAR PARSHAD.

[23 Calc. 950
[L. R. 23 I. A. 92

ONUS OF PROOF—*continued.*

(5) EJECTMENT.

7.—*Suit for ejectment—Trespasser—Proof of titles.*] In an ejectment suit, the defendant, though a trespasser, is entitled to require the plaintiff who seeks to eject him to prove that he has a superior title. KALU *v.* BARSU.

[19 Bom. 803

(6) ENHANCEMENT OF RENT.

8.—*Alteration of area of tenant's holding—Suit for enhancement of rent.*] To entitle the plaintiff to a decree for enhancement of rent on the ground of an alteration in the area of the defendant's holding, the plaintiff must show that the defendant is holding lands in excess of what he is paying rent for, and in order to do that he must show for what quantity of land the defendant is paying rent. SURJA KANTA ACHARJEE *v.* BANESWAR SHAHA.

[24 Calc. 251

(7) HINDU LAW—ALIENATION.

9.—*Voluntary transfer alleged to have been made by a Hindu widow—Burden of proving her knowledge of her rights—Gift.*] Where a voluntary transfer by a Hindu widow is alleged, the burden of proving that it was a free gift, made with knowledge by her of her rights, is on the donee. The plaintiff, widow of the only son who survived his father, who was the owner of village lands and other property, had become, on her husband's death without issue, entitled as the widow, to the estate which he had inherited. But she obtained possession of only half of it. The other half was in the recorded possession, when this suit was brought, of the widow of her late husband's younger brother, who died in his father's lifetime. The case which the latter widow, as defendant, now sought to make was that she had become entitled to a share in the estate as the result of a series of transactions, by way of family arrangement, in which the two widows, and their mother-in-law, widow of the deceased father, had taken part. These included a reference to arbitration, a release, and *dakhil kharij* in settlement records:—*Held*, that the plaintiff must succeed, in the absence of proof of which the burden was on the defendant, that the plaintiff, when ceding half of the estate to which she was entitled, had knowledge of her right, as widow, to the whole, and had freely made what in effect was a gift. DEO KUAR *v.* MAN KUAR.

[17 All. 1
[L. R. 21 I. A. 198

10.—*Power of widow of sonless Hindu to mortgage ancestral property — Pardanashin woman, Conditions necessary to the execution of a valid deed by—Power of reversioner to sell or mortgage reversionary interest in—Expectancy—Transfer of Property Act (IV of 1882), s. 6, cl. (a).*] *K* died in 1866 possessed of considerable property both moveable and immoveable. He left surviving him a widow, *H*, who died in 1878, a daughter, *A*, married to one *L*, and two grandsons *I* and *S*, sons of *A*, the latter of whom, *S*, died some time subsequent

ONUS OF PROOF—*continued.*

(7) HINDU LAW—ALIENATION—*continued.*

to 1881, as did also his father *L*. In December, 1877, a mortgage-deed was executed over certain of the ancestral property of the family of *K*, the ostensible executants being *L* for himself, and *H*, *A* and *I* through *L* as their general attorney. This deed was to secure a debt of Rs. 10,000 stated to be to some small extent for an advance in cash, and as to the balance in respect of certain previous debts and interest thereon. At the date of this bond both *I* and *S* were minors. In April, 1881, *H* having in the meanwhile died, and *I* having attained majority, but *S* being still a minor, a second bond of a similar nature to the former was executed by *L*, *A* and *I* for Rs. 20,000, this sum being recited as composed of various debts of earlier date with interest thereon, of an advance to pay Government revenue, an advance for expenses of the marriage of *L's* daughter, and a very small balance in cash. It was not shown that the debts secured by either of these two bonds were debts incurred for legal necessity by the widow or daughter of *K*, or that the mortgagees after due inquiry had reasonable grounds for believing that such necessity existed, nor was it shown that the mortgages were entered into with the consent of all the husband's kindred under circumstances which might raise a valid presumption that the debts secured by them were properly incurred. It was further not shown that the power-of-attorney under which *L* purported to act in executing the bond of 1877 on behalf of *H*, *A* and *I* was ever properly explained to the professed executants or that they understood its import; nor was it shown that either of the bonds was duly explained to and comprehended by the professed executants other than *L* himself, in manner required by law in the case of documents executed by *pardanashin* women; nor, though at the date of the execution of the second bond *I* had attained the age of majority, did it appear that he signed the bond with any clear knowledge of its contents or of the liability which he was professing to incur thereby, or otherwise than through the influence brought to bear on him by his father *L*:—*Held*, on suit by the mortgagees to bring to sale the ancestral property which had been of *K* in his lifetime in enforcement of the two mortgages abovementioned, that the mortgages were not binding on the alleged executants or on the ancestral property at the date of suit in the hands of *A*. *I's* interest in the family properly in suit could only be affected by the mortgage of the 2nd of April, 1881, on proof that the debt was in fact one, or was on reasonable inquiry by and statements made to the lenders of the money believed by them to be one, in respect of which his mother *A*, as a Hindu daughter in possession, could mortgage or charge the family property beyond her own then vested interest in it, or on proof that he, as one of the reversioners, by joining with his mother in executing the documents of mortgage, led the lenders of the money to believe that such a necessity existed for the loan as enabled the Hindu daughter to create a valid mortgage on the family property beyond the extent of her own life

ONUS OF PROOF—*continued.*

(7) HINDU LAW—ALIENATION—*continued.*

interest. The Hindu law which prevails in the N.-W. Provinces recognises no power in a reversioner to sell or mortgage his interest in expectancy, even although he may be the heir-apparent. It is absolutely necessary, before holding that a *pardanashin* lady or her property is liable on a contract alleged to have been made by her or in consequence of an alleged execution by her of a general power-of-attorney, to be reasonably satisfied that the liability she was incurring and the nature of the transaction were explained to her; and more particularly is this the case if it is sought by reason of her having executed a document, to fix her and her property with a liability to pay a debt, which if the document had not been executed by her or by an agent appointed by her with adequate power, could not have been enforced against her property. It is also necessary when money-lenders in this country seek to enforce against the property of a Hindu family a contract of mortgage made by a reversioner, who, although of age at the time, was then still of tender years and without experience of business, for the Court, when the question is raised, to be satisfied that the reversioner understood the nature of the transaction and the effect of the contract which he was entering into, or that the reversioner of the family property, in which the reversioner had an estate in expectancy only, was liable for the debt in respect of which the mortgage is sought to be enforced, and that no unfair advantage was taken of the reversioner's youth and inexperience. ACHHAN KUAR *v.* THAKUR DAS.

[17 All. 125

11.—*Alienation by widow—Proof that money on mortgage was advanced for purpose justified by legal necessity—Evidence of sufficiency of husband's estate to maintain widow.*] A Hindu proprietor's heirs, in possession after the death of his widow, who had mortgaged part of the inheritance, were sued by the mortgagee's heir, who represented him, to enforce the mortgage as binding on the land. There was evidence that, after the mortgage was executed, previous mortgages made by the widow were paid off with the borrowed money; but there was no evidence connecting any of those securities with a debt of the husband; or that the mortgage was made for a legitimate purpose:—*Held* that, although the suit was brought by the representative, and not by the original mortgagee, the burden of proving the money to have been advanced to the widow for a purpose justified by legal necessity was on the plaintiff; and that it was incumbent on him to adduce sufficient evidence of the nature of the transaction. That general evidence to the effect that the husband died in debt, and that the widow substituted new securities at reduced interest for former mortgages, was not sufficient to exempt the plaintiff from having to prove the particulars of the transaction and its justification. That the burden of proving that the estate left by the husband was sufficient to maintain the widow was not thrown upon the defendants. *Hunooman*

ONUS OF PROOF—*continued.*

(7) HINDU LAW—ALIENATION—*concluded.*

Pershad Pandey v. *Mundraj Koonweree*, 6 Moo. I. A. 393, discussed. MAHESHAR BAKSH SINGH *v.* RATAN SINGH.

[23 Calc. 766
[L. R. 23 I. A. 57

(8) LIMITATION AND ADVERSE POSSESSION.

12.—*Limitation Act* (*XV of* 1877), *Sch. II, Arts.* 127 *and* 144—*Suit for possession of land alleging a previous partition.*] The defendant had purchased the land in question at a sale in execution of a decree obtained by him against cousins of the plaintiff. The plaintiff claimed to recover the land, alleging that it was his share of ancestral property which had been allotted to him on partition four or five years before suit, and of which he had actually been in separate possession. The lower Court upon these allegations rejected the plaintiff's claim, holding that the suit was not one for partition and did not fall within Art. 127 of the Limitation Act (XV of 1877), but that Art. 144 applied, and that the plaintiff had failed to show that the defendant's adverse possession had begun within twelve years preceding the suit. On appeal to the High Court:—*Held*, reversing the decree and sending back the case, that under Art. 144 it was for the defendant to prove adverse possession for twelve years before suit. HANMANTA KOLAJI *v.* MAHADEV KONDAJI.

[18 Bom. 513

13.—*Diluviation—Subordinate tenure—Suit for recovery of possession of land—Re-formation on the site of plaintiff's villages.*] In a suit, brought by the plaintiffs on the 10th December, 1888, for recovery of possession of three plots of land, on the allegation that the lands in dispute were re-formations on the site of the villages of K and M. which were let out in *patni* and *darpatni* to third parties in 1868; and that the rights of the *patnidar* and the *dar-patnidar* were re-acquired by them in the years 1878, 1880, 1883, and 1892, the defence was that the lands were not re-formation, but accretion to the defendant's village of C:—*Held*, that as the plaintiffs' title to, and possession of the villages of H and M, down to the time of their diluviation, was not denied, and as it was found that the disputed plots of land were part of the said villages, it was not incumbent on the plaintiffs to prove possession of the lands in dispute previous to the diluviation, but the onus lay on the defendants to prove adverse possession for more than twelve years prior to the institution of the suit, and the suit was not barred by limitation. *Woomesh Chunder Goopto* v. *Raj Narain Roy*, 10 W. R. 15; and *Davis* v. *Abdul Hamed*, 8 W. R. 55, referred to. GUNGA KUMAR MITTER *v.* ASUTOSH GOSSAMI.

[23 Calc. 863

14.—*Waste land subsequently made cultivable—Presumption—Constructive possession.*] The doctrine of constructive possession applies only in favour of a rightful owner, and must not, as a rule, be extended in favour of a wrong-doer,

ONUS OF PROOF—*concluded.*

(8) LIMITATION AND ADVERSE POSSESSION—*concluded.*

whose possession must be confined to land of which he is actually in possession. In a suit for the possession of lands formerly uncultivable, but subsequently brought under cultivation, the District Judge had allowed the plea of limitation to prevail against the plaintiff upon a finding—based, not upon evidence of actual possession by the defendants, but upon an inference from part of the evidence—that the defendants had been in constructive possession for over 12 years prior to the suit:—*Held*, that so far as the judgment and decree of the District Judge related to certain plots described as *patit* or uncultivable lands, they must be set aside, and the case remanded to the District Judge to determine (*a*) how far the presumption in favour of the plaintiff as to the continuance of the uncultivable state of the lands till within twelve years of suit applied; and (*b*) how far that presumption had been rebutted by evidence of actual possession on the part of the defendants. MOHINI MOHAN ROY *v.* PROMODA NATH ROY.

[24 Calc. 256

(9) POSSESSION AND PROOF OF TITLE.

15.—*Shifting of burden of proof—Land taken by Government as forest reserve—Madras Forest Act* (*Madras Act V of* 1882).] Portions of certain land, which had been taken up by Government as forest reserve, were claimed by one who had admittedly been in possession and enjoyment of them for thirty years. The Government failed to establish any subsisting title of its own:—*Held*, that the burden of proof had been shifted on to the Government and had not been discharged, and accordingly that the claim should be allowed. SECRETARY OF STATE FOR INDIA *v.* KOTA BAPANAMMA GARU.

[19 Mad. 165

OPIUM ACT (I OF 1878).

——, s. 4.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[19 Bom. 626

——, s. 9.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—OPIUM ACT.

[19 All. 465

——, s. 9.—*Act XIII of* 1857—*Wrongful entrance and illegal search, Liability of Police-officer for—Code of Criminal Procedure* (1882), *ss.* 155, 156 *and* 165—*Non-cognizable offence.*] An offence under s. 9 of the Opium Act (I of 1878), and not coming under s. 14 of that Act, is a non-cognizable offence, and is therefore one for which by s. 4 of the Criminal Procedure Code, a Police-officer cannot arrest without warrant; and he has therefore under s. 155 of the Code no authority to investigate such an offence without the order of a Magistrate; nor under

OPIUM ACT (I OF 1878)—*concluded.*

s. 165 can he make a search in respect of it. The power of arrest without warrant referred to in cl. (*q*) of s. 4 of the Criminal Procedure Code is an unqualified power, and not a conditional power, as in s. 24 of Act XIII of 1857, which only gives the right to a Police-officer to arrest without warrant in case the accused does not furnish the security required by that section. Where a Police-officer, therefore, in respect of an offence under s. 9 of the Opium Act not coming under s. 14 of the Act, made a search in the house of the accused without an order of a Magistrate:—*Held*, that his action could not be justified, either under s. 24 of Act XIII of 1857, or under the Code of Criminal Procedure, and that he was liable in an action for damages for the illegal search. BAHABAL SHAH *v.* TARAK NATH CHOWDHRY.

[24 Calc. 691

ORDER.

—— absolute for sale of mortgaged property.

See LIMITATION ACT, ART. 178.

[16 All. 23
[22 Calc. 924

——, Copy of.

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION.

[17 All. 213

—— dismissing appeal for default.

See REVIEW—POWER TO REVIEW.

[23 Calc. 339
[24 Calc. 350

——, Ex-parte, Application to set aside.

See COMPANIES ACT, S. 169.

[19 Bom. 208

—— in insolvency.

See DISTRICT JUDGE, JURISDICTION OF.

[17 Mad. 377

—— interfering with execution of decree.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[17 All. 485

——, Interlocutory.

See REVISION—CRIMINAL CASES—GENERALLY.

[20 Bom. 543

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 35

—— of Government officer, Suit to set side.

ORDER—*concluded.*

See LIMITATION ACT, ART. 14.

[21 Calc. 626

—— of Her Majesty in Council, dated November 29th, 1884, s. 6.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[19 Bom. 741

—— refusing to appoint receiver.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—FINALITY OF DECREE OR ORDER.

[22 Calc. 928

—— refusing to certify payment to decree-holder out of Court.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[18 Mad. 26

—— rejecting claim in execution-proceedings.

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[17 Mad. 17

—— rejecting criminal appeal.

See REVIEW—CRIMINAL CASES.

[19 Bom. 732

—— removing attachment, Suit to set aside.

See CLAIM TO ATTACHED PROPERTY.

[18 Bom. 260

See LIMITATION ACT, ART. 11.

[18 Bom. 260

—— staying institution of suit.

See LIMITATION ACT, S. 15.

[17 All. 198
[L. R. 22 I. A. 31

ORDERS.

See CASES UNDER APPEAL—DECREES.

See CASES UNDER APPEAL—ORDERS.

See CASES UNDER LETTERS PATENT, HIGH COURT, CL. 15.

See CASES UNDER LETTERS PATENT, N.-W. P., CL. 10.

See CASES UNDER REMAND.

See CASES UNDER RES JUDICATA—ORDERS IN EXECUTION OF DECREE.

See CASES UNDER SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

OUDE CIVIL COURTS ACT (XIII OF 1879).

——, s. 27.

See HIGH COURT, JURISDICTION OF—HIGH COURT, N.-W. P.—CIVIL.

[18 All. 375

OUDE COURTS ACT (XIV OF 1891).

——, s. 8.

See HIGH COURT, JURISDICTION OF—HIGH COURT, N.-W. P.—CIVIL.

[18 All. 375

OUDE ESTATES ACT (I OF 1869).

——, s. 22, sub-sections 4 and 7.

—Taluk inherited by a daughter's son—Succession or inheritance—Primogeniture.] The *taluk* to which the succession was in dispute was one of those entered in the first and second of the lists prepared in conformity with s. 8 of the Oude Estates Act, 1869, descending to a single heir by primogeniture. The last *talukdar* died without leaving a son, but left a widow, and by a former wife two daughters, of whom the elder had a son. The widow's claim to an estate for life, under sub-section 17 of s. 22 of the above Act, was met by the defence that the daughter's son, having been treated by his maternal grandfather in all respects as his own son, was, under sub-section 4, entitled to inherit the *taluk*. The Courts below decided in his favour:—*Held*, that the Courts below were right as to the treatment of the daughter's son, in regard to sub-section 4. *Pertab Narain Singh* v. *Subhao Koer*, I. L. R. 3 Calc. 626; L. R. 4 I. A. 228, did not show that sub-section 4 had been construed to require evidence on that point attaining to any special degree. UMRAO BEGUM *v.* IRSHAD HUSAIN.

[21 Calc. 997
[L. R. 21 I. A. 163

OUDE, LAW OF.

See MAHOMEDAN LAW, DOWER.

[21 Calc. 135
[L. R. 20 I. A. 144

OUDE LAND REVENUE ACT (XVII OF 1876).

——, ss. 175 and 176.

—Suit against the Collector as Agent for the Court of Wards—Disqualified owner—Act XXXV of 1858 (Care of the Estates of Lunatics), s. 11—Parties—Defendant—Civil Procedure Code, ss. 440 and 464.] A decree was made against a Deputy Commissioner as Agent for the Court of Wards for a debt due from a proprietor, whose estate had come under the charge of that officer in virtue of an order made by the District Court under Act XXXV of 1858, the debtor having been found to be of unsound mind and incapable of managing his affairs,

OUDE LAND REVENUE ACT (XVII OF 1876)—*concluded.*

The Judicial Commissioner, having called for the record under s. 622 of the Civil Procedure Code, set aside the decree, which had been affirmed on appeal. He was of opinion that the suit should not have been brought against the Deputy Commissioner in the above character, but would only lie against a manager appointed as Act XXXV of 1858 directed, or else against a guardian. This judgment having gone upon a technicality, not well founded, was reversed, and the original decree was restored. ASHARFI LAL *v.* DEPUTY COMMISSIONER OF BARA BANKI.

[22 Calc. 729
[L. R. 22 I. A. 90

OUDE LAWS ACT (XVIII OF 1876).

——, s. 5.

See MAHOMEDAN LAW—DOWER.

[21 Calc. 135
[L. R. 20 I. A. 144

——, ss. 9—13.

See PRE-EMPTION — RIGHT OF PRE-EMPTION.

[21 Calc. 496

OUDE REDEMPTION ACT (XIII OF 1866).

——, Mortgage dated previous to.

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[23 Calc. 483
[L. R. 23 I. A. 8

OUTCASTE, PROPERTY OF.

See PROBATE—OPPOSITION TO, OR REVOCATION OF, GRANT.

[21 Calc. 697

OWNERSHIP.

——, Dispute as to.

See LETTERS OF ADMINISTRATION.

[19 Bom. 828

See TITLE—EVIDENCE AND PROOF OF TITLE.

[19 Bom. 828

——, Evidence of, Transfer of.

See MAHOMEDAN LAW—GIFT.

[19 All. 267
[L. R. 24 I. A. 1

See REGISTRATION ACT, S. 49.

[18 Bom. 18

OWNERSHIP—*concluded.*

——, Presumption of.

See ENDOWMENT.

[16 All. 412

PAPER BOOKS.

——, Failure to deposit costs of.

See LETTERS PATENT, HIGH COURT, CL. 15.

[23 Calc. 339

See LIMITATION ACT, ART. 168.

[23 Calc. 339

See REVIEW—POWER TO REVIEW.

[23 Calc. 339

[24 Calc. 350

PARDANASHIN WOMEN.

See COMMISSION—CRIMINAL CASES.

[24 Calc. 551

1.—*Attendance of pardanashin—Warrant case—Issue of summons—Criminal Procedure Code* (1882), *ss.* 204 *and* 205—*Discretion of Court.*] In a warrant case, the accused being a *pardanashin*, the Magistrate can dispense with her attendance under s. 205 of the Criminal Procedure Code if he issues a summons in the first instance, and this he has a discretion to do under s. 204. BASUMOTI ADHIKARINI *v.* BUDRAM KALITA.

[21 Calc. 588

2.—*Proof of explanation of deed—Gosha women, Deed executed by—Onus of proof.*] In a suit on a mortgage it was held that two *gosha* women, who had executed the instrument in conjunction with their son and brother, respectively, were not, under the circumstances, entitled to have their shares exonerated for want of proof that the transaction had been explained to them. *Ashgar Ali* v. *Delroos Banoo Begum*, I. L. R. 3 Calc. 324, distinguished. BADI BIBI SAHIBAL *v.* SAMI PILLAI.

[18 Mad. 257

3.—*Proof of explanation of deed executed by pardanashin woman—Mortgage of ancestral property made by Hindu widow under power of attorney given by her to male relative.*] It is absolutely necessary, before holding that a *pardanashin* lady or her property is liable on a contract alleged to have been made by her, or in consequence of an alleged execution by her of a general power-of-attorney, to be reasonably satisfied that the liability she was incurring and the nature of the transaction were explained to her; and more particularly is this the case if it is sought, by reason of her having executed a document, to fix her and her property with a liability to pay a debt, which, if the document had not been executed by her or by an agent appointed by her with adequate power, could not have been enforced against her property. ACHHAN KUAR *v.* THAKUR DAS.

[17 All. 125

PARDON.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

——, Withdrawal of.

See SESSIONS JUDGE—JURISDICTION OF.

[22 Calc. 50

— Criminal Procedure Code (1882), *s.* 339 — *Approver—Withdrawal of conditional pardon—Practice.*] The withdrawal of the conditional pardon granted to an approver should be made under *s.* 339 of the Criminal Procedure Code by the authority that granted it and not by the High Court. QUEEN-EMPRESS *v.* MANICK CHANDRA SARKAR.

[24 Calc. 492

PARENTAGE, PROOF OF.

See EVIDENCE ACT, S. 9.

[18 All. 98

PAROL EVIDENCE.

See EVIDENCE—PAROL EVIDENCE.

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865).

——, s. 30.—*Suit for divorce—Guardian ad litem—Minor—Age of majority—Husband and wife.*] In a suit by a husband for divorce under s. 30 of the Parsi Marriage Act (XV of 1865), the defendant, if under the age of 21 years, although more than 18, must be deemed to be a minor, and a guardian of the defendant for the suit must be appointed. SORABJI CAWASJI POLISHVALA *v.* BUCHOOBAI.

[18 Bom. 366

PARTIES. *Col.*

1. Parties to Suits ... 910
   (*a*) Benamidars ... 910
   (*b*) Ejectment, Suit for ... 911
   (*c*) Executors ... 911
   (*d*) Joint Family ... 912
   (*e*) Mortgages, Suits concerning ... 912
   (*f*) Official Assignee ... 914
   (*g*) Partnerships, Suits concerning 915
   (*h*) Purchasers ... 915
   (*i*) Specific Performance ... 916
2. Suits by some of a Class as Representatives of Class ... 916
3. Adding Parties to Suits ... 918
   (*a*) Plaintiffs ... 918
   (*b*) Defendants ... 918
   (*c*) Respondents ... 919
   (*d*) Procedure ... 919
4. Striking off Parties ... 920
   (*a*) Defendants ... 920
5. Substitution of Parties ... 920
   (*a*) Generally ... 920
   (*b*) Plaintiffs ... 920
   (*c*) Appellants ... 921
   (*d*) Respondents ... 922

PARTIES—*continued.*

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[18 Mad. 439
[20 Mad. 378

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[17 Mad. 108

See CASES UNDER CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUIT.

See EXECUTOR.

[21 Bom. 400

See HINDU LAW — REVERSIONERS — POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

[18 Mad. 53

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, &C.

[21 Calc. 727
[23 Calc. 55

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS.

[18 Mad. 51
[21 Calc. 29, 404
[23 Calc. 55

See REPRESENTATIVE OF DECEASED PERSON.

[22 Calc. 903

See CASES UNDER RES JUDICATA — PARTIES.

——, Adding.

See COSTS—SPECIAL CASES — RESPONDENTS.

[20 Bom. 167

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS OR WORKING FOR GAIN.

[20 Bom. 767

See LETTERS PATENT, HIGH COURT, CL. 12.

[20 Bom. 767

See REMAND—GROUND FOR REMAND.

[19 Mad. 157

——, Appearance of.

See CIVIL PROCEDURE CODE, S. 102.

[23 Calc. 991

See CIVIL PROCEDURE CODE, S. 108.

[18 All. 241
[21 Calc. 269

PARTIES—*continued.*

——, Consent of.

See ARBITRATION— AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

[21 Calc. 590
[L. R. 21 I. A. 47

See BENGAL TENANCY ACT, S. 95.

[23 Calc. 522

See MADRAS FOREST ACT, S. 4.

[17 Mad. 193

See MAMLATDAR, JURISDICTION OF.

[20 Bom. 630

——, Death of.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[21 Bom. 314

See JUDGMENT—CIVIL CASES.

[19 Bom. 807

See CASES UNDER SALE IN EXECUTION OF DECREE — INVALID SALES — DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

—— entitled to notice.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — RIGHTS OF PURCHASERS.

[18 Bom. 594

——, Joinder of.

See LIMITATION ACT, S. 22.

[21 Bom. 580

See MULTIFARIOUSNESS.

[24 Calc. 831

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[23 Calc. 723

See VALUATION OF SUIT—APPEALS.

[23 Calc. 723

——, Misjoinder of.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[18 Bom. 110

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.

[17 Mad. 168

See MISJOINDER OF PARTIES.

[22 Calc. 833
[19 Mad. 335

See MULTIFARIOUSNESS.

[16 All. 279

PARTIES—*continued.*

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT.

[19 All. 324

See SPECIAL OR SECOND APPEAL — PROCEDURE IN SPECIAL APPEAL.

[18 Bom. 110

——, Non-appearance of.

See APPEAL—DEFAULT IN APPEARANCE.

[20 Bom. 736

[19 All. 355

See CIVIL PROCEDURE CODE, S. 108.

[21 Calc. 269

[23 Calc. 738

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[20 Bom. 541

See RES JUDICATA — JUDGMENTS ON PRELIMINARY POINTS.

[21 Bom. 91

——, Non-joinder of.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[17 Mad. 122

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—EJECTMENT.

[21 Bom. 154

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[17 Mad. 17

See MALABAR LAW—JOINT FAMILY.

[20 Mad. 129

See PARTITION—RIGHT TO PARTITION.

[18 All. 334

See RESTITUTION OF RIGHTS BY MOTION.

[19 All. 136

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[19 Bom. 276

[21 Bom. 424

e e SALE IN EXECUTION OF DECREE—INVALID SALES — SALE PENDING APPEAL.

[23 Calc. 857

——, Proof of identity of.

See DIVORCE ACT, S 7.

[22 Calc. 544

PARTIES—*continued.*

——, Substitution of.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[22 Calc. 558

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[22 Calc. 143

See CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUIT.

[23 Calc. 374

See COMPANY—WINDING-UP—LIABILITY OF OFFICERS.

[18 All. 156

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[22 Calc. 558

[18 Bom. 224

LIMITATION ACT, S. 22.

[17 Mad. 12

[18 Mad. 189

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS.

[21 Calc. 404

See RIGHT OF SUIT — SURVIVAL OF RIGHT.

[22 Calc. 92

(1) PARTIES TO SUITS.

(*a*) BENAMIDARS.

1.—*Suit on title for possession of immoveable property—Right of benamidar to sue in his own name.*] A *benamidar*, suing for the recovery of immoveable property on title, can sue in his own name, and when such a suit is instituted by a *benamidar*, it must be held to have been instituted with the consent and approval of the beneficiary, against whom any adverse decision on the title set up will take effect as a *res judicata*. *Prosunno Koomar Roy Chowdhry* v. *Gooroo Churn Sein*, 3 W. R. 159; and *Hari Gobind Adhikari* v. *Akhoy Kumar Mozumdar*, I. L. R. 16 Calc. 364, dissented from. *Fusellun Beebee* v. *Omdah Beebee*, 10 W. R. 469; and *Meheroonissa Bibee* v. *Hur Churn Bose*, 10 W. R. 220, distinguished. *Gopeekrist Gosain* v. *Gungapersaud Gosain*, 6 Moo. I. A. 53, explained. *Ram Bhurosee Singh* v. *Bissesser Narain Singh*, 18 W. R. 454; *Gopi Nath Chobey* v. *Bhugwat Pershad*, I. L. R. 10 Calc. 697; and *Shangara* v. *Krishnam*, I. L. R. 15 Mad. 267, referred to. NAND KISHORE LAL *v.* AHMAD ATA; ANMOLI BIBI AHMAD ATA; BHOLE BIBI *v.* AHMAD ATA.

[18 All. 69

2.—*Suit by benamidar.*] A mortgage bond was executed ostensibly in favour of *R*, but *J* was the real mortgagee. A suit was brought by

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*a*) BENAMIDARS—*concluded.*

R, the *benamidar*, to enforce the bond; *J*, the real mortgagee, made over the debt on a date previous to the suit, but executed the formal deed of assignment on a date subsequent thereto:—*Held*, that the *benamidar* might maintain the suit. BHOLA PERSHAD *v.* RAM LALL.

[24 Calc. 34

3.—*Suit for foreclosure of mortgage—Beneficial owner not made a party—Transfer of Property Act (IV of 1882), s. 85—Right of suit.*] A suit for foreclosure of a mortgage may be brought by the person named in the mortgage deed as the mortgagee, although he was, in fact, only the *benamidar* of the beneficial owner; and such a suit should not be dismissed because the beneficial owner is not added as a party. SACHITANANDA MOHAPATRA *v.* BALORAM GORAIN.

[24 Calc. 644

(*b*) EJECTMENT, SUIT FOR.

4.—*Suit based on lease from Government—Government as party to suit.*] If the plaintiff in an ejectment suit can make out a legal title to the land, he is entitled to maintain a suit against the person in actual juridical possession of such land for its recovery without making the person under whom the latter claims to hold a party to the suit. So where plaintiffs based their title to the land in dispute on a lease granted by Government giving occupancy right to their predecessor in title, and sued the defendants in ejectment; and the defendants claimed to hold the land under an occupancy title conferred on them by Government subsequent to the plaintiffs' lease, it was *held* that though Government might have properly been made a party so as to bind it by the decree and prevent future litigation, it was not a necessary party to the suit. KASHI *v.* SADASHIV SAKHARAM SHET.

[21 Bom. 229

5.—*Civil Procedure Code* (1882), *s.* 32—*Joinder of parties—Change in character of suit.*] In an ejectment suit by a landlord against his tenant, the Court should not bring on to the record the person from whom the plaintiff holds the land, nor persons claiming to hold it from a third party, nor such third party. SANKARAN NARAYANAN *v.* ANANTHANARAYANAYYAN.

[20 Mad. 375

(*c*) EXECUTORS.

6.—*Administration, Suit for—Application for appointment of receiver—Civil Procedure Code* (1882), *s.* 438.] Where a Mahomedan testator had by his will appointed three executors, only one of whom had acted and got possession of the estate, a suit by the testator's widow for administration of the estate was held sufficiently well constituted for the purpose of a motion for a receiver, although only the executor who had acted was made defendant, the other two executors not being parties to the suit. *Quære:* Whether it would not be necessary to add the said two executors before the suit came on for hearing. HAFIZABAI *v.* ABDUL KARIM.

[19 Bom. 83

(*d*) JOINT FAMILY.

7.—*Manager—Lease granted by manager—Suit for rent—Co-sharers.*] A manager of a joint Hindu family who, as such, has granted a lease, is during his lifetime the only person to sue for rent due under the lease, but after his death his son, who has not succeeded his father in the management, cannot sue without joining the other members of the joint family as parties. *Dada* v. *Bhau*, P. J. 1876, p. 11; and *Sayad Fatulla* v. *Bola*, P. J. 1884, p. 33, followed. DAYABHAI LALLUBHAI *v.* GOPALJI DAYABHAI.

[18 Bom. 141

8.—*Suit on bond given in name of one member of joint family for loan made out of joint family funds.*] A loan was made to the defendant out of joint family funds, and a bond for the amount was given in the name of one of the members of the joint family. He sued the defendant on the bond:—*Held*, that the other members of the joint family were not necessary parties. HARI VASUDEV KAMAT *v.* MAHADU DAD GAVDA.

[20 Bom. 435

(*e*) MORTGAGES, SUITS CONCERNING.

9.—*Suit by mortgagee and sale in execution of mortgage decree—Grant of patni by mortgagor—Patnidar—Right of redemption—Notice—Constructive notice—Transfer of Property Act (IV of 1882), ss. 3 and 85.*] A *mouzah*, K, was mortgaged by *D* by bonds extending from 1867 to 1879, the last bond of the 5th January, 1879, including the amounts borrowed on the former bonds. On the 7th January, 1872, whilst it was so under mortgage, the same mortgagor *D* executed bonds whereby he mortgaged K to the defendants, and in suits brought on the basis of those bonds, came to an amicable settlement with the defendants by which, on the 25th February, 1879, he settled K in *patni* with them; the *bonus* for the *patni* going to satisfy the mortgage debts. In 1885, a suit, to which the present defendants were not made parties, was brought by the mortgagees of the bond of the 5th January, 1879, and in execution of the decree in that suit, K was put up for sale and purchased by the plaintiff on the 21st June, 1886. In a suit brought in 1890 against the defendants to set aside the *patni* and for *khas* possession of K, it was found that the plaintiff had notice of the *patni*:—*Held*, that the defendants as *patnidars* had an interest in K within the meaning of s. 85 of the Transfer of Property Act, and should therefore have been made parties to the suit in 1885, and thereby given an opportunity of redeeming the mortgage on which that suit was

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*e*) MORTGAGES, SUITS CONCERNING—*continued.*

brought. *Kokil Singh* v. *Duli Chand*, 5 C. L. R. 243; and *Kasimunnissa Bibee* v. *Nilratna Bose*, I. L. R. 8 Calc. 79, referred to. If not as *patnidars*, they were entitled as second mortgagees to have an opportunity of redeeming the prior mortgage and to be parties to that suit. Not having been parties, the plaintiff was not entitled to *khas* possession as against them. *Nanack Chand* v. *Teluchdye Koer*, I. L. R. 5 Calc. 265; 4 C. L. R. 358; *Dirgopal Lall* v. *Bolakee*, I. L. R. 5 Calc. 269; and *Radha Pershad Misser* v. *Monohar Dass*, I. L. R. 6 Calc. 317, referred to. JUGUL KISSORE LAL SING DEO *v.* KARTIC CHUNDER CHOTTOPADHYA.

[21 Calc. 116

10.—*Suit for sale on mortgage—Non-joinder of parties—Joint Hindu family—Suit for sale on mortgage by father without joining sons—Transfer of Property Act (IV of 1882), s. 85.*] When a plaintiff mortgagee institutes a suit for sale under s. 88 of Act IV of 1882 against his mortgagor, who is the father of sons in an undivided Hindu family governed by the Mitakshara, without joining as parties to the suit the sons of the mortgagor, of whose interests he has notice, and obtains a decree and an order absolute for sale against the father only, the sons can successfully sue for a declaration that the mortgagee decree-holder is not entitled to sell in execution of his decree for sale the interests of the sons in the property comprised in the mortgage given by the father, although the sole ground of their suit is that they were not parties to the suit by the mortgagee. So *held* by EDGE, C. J., KNOX, BLAIR, BURKITT and AIKMAN, JJ., *dissentiente* BANERJI, J:—*Held*, by BANERJI, J., that where, under the circumstances above described, a decree has been obtained against the father alone without joining the sons, the sons cannot in the suit brought by them plead against the operation of the decree on their interests any pleas other than those which they could have urged against the claim of the mortgagee in order to relieve them from liability for their father's debt had they been made parties to the mortgagee's suit. BHAWANI PRASAD *v.* KALLU.

[17 All. 537

11.—*Suit for payment of mortgage money or foreclosure—Non-joinder of person interested in the mortgaged property, Effect of—Transfer of Property Act (1882), s. 85—Civil Procedure Code (1882), s. 32—Plea taken in appeal for the first time.*] The non-joinder in a suit to which Chap. IV of Act IV of 1882 applies of a person interested in the mortgaged property within the meaning of s. 85 of that Act, and of whose interest the plaintiff has notice, is a fatal defect in the suit, unless cured by the action of the Court under s. 32 of the Code of Civil Procedure; and where such non-joinder is brought to the notice of the Court, the Court will give effect to the objection and dismiss the suit, even though such objection be raised for the first time in appeal. *Mata Din*

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*e*) MORTGAGES, SUITS CONCERNING—*concluded.*

Kasodhan v. *Kazim Husain*, I. L. R. 13 All. 432; *Janki Prasad* v. *Kishen Dat*, I. L. R. 16 All. 478; and *Bhawani Prasad* v. *Kallu*, I. L. R. 17 All. 537, referred to. GHULAM KADIR KHAN *v.* MUSTAKIM KHAN.

[18 All. 109

12.—*Prior and subsequent mortgagees—Effect of non-joinder in a suit on a mortgage of persons interested in the mortgaged property—Transfer of Property Act (IV of 1882), s. 85.*] Certain mortgagees holding a second mortgage obtained a decree against their mortgagor and a subsequent mortgagee, one *H L*, for sale of the mortgaged property. At the time of the suit there was subsisting on the same property a prior mortgage held by one *D P*. *D P* was not made a party to that suit. After the decree in that suit was passed, but before execution, *D P* brought a suit for sale on his mortgage, but did not make the second mortgagees parties to that suit. In that suit *D P* obtained a decree in execution of which he brought a portion of the mortgaged property to sale, and some of it was purchased by *H L*. On application by the second mortgagees for an order absolute for sale in execution of their decree, it was held that the property purchased by *H L* in execution of *D P's* decree on his prior mortgage could not be brought to sale in execution of the second mortgagee's decree. *Mata Din Kasodhan* v. *Kazim Husain*, I. L. R. 13 All. 432, referred to. HIRA LAL *v.* KISHAN LAL.

[19 All. 543

(*f*) OFFICIAL ASSIGNEE.

13.—*Suit against widow of insolvent as his legal representative—Form of decree.*] The husband of the defendant was adjudicated an insolvent in 1891, and the usual order was made vesting his estate in the Official Assignee. He subsequently died without having filed his schedule, and no schedule had ever been filed. After his death a suit was brought by a creditor against the defendant as the "widow, heiress, and legal representative" of the deceased insolvent, in which suit a decree was made against her, "the amount to be levied out of the assets of the deceased in her hands." In an application by the defendant to have the decree set aside on the grounds that the Official Assignee was a necessary party to the suit, and that the decree should have been against him as her husband's representative as his estate was in his lifetime, and since had continued to be, vested in the Official Assignee:—*Held*, that the Official Assignee was not a necessary party to the suit. The Official Assignee is not a necessary party to any suit to recover a money debt from a person who is either an insolvent at the time the suit is instituted or becomes insolvent pending the suit. But a decree made against an insolvent under such circumstances should be restricted in form so as not to allow the judgment-creditor by means of execution to obtain an advantage over the general body of creditors. *In*

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*f*) OFFICIAL ASSIGNEE—*concluded.*

re Hunt Monnet & Co.; *Ex parte Gamble* v. *Bhola Gir*, 1 Bom. H C. 251; and *Miller* v. *Budh Singh Dudhuria*, I. L. R. 18 Calc. 43, referred to. In this case the decree was varied by the omission of the words "to be levied out of the assets of the deceased in her hands," and liberty was reserved to the judgment-creditor to prove for the amount of his decree in the Insolvent Court, with a note that execution of the decree is stayed pending the insolvency. CHANDMULL *v.* RANEE-SOONDERY DOSSEE.

[22 Calc. 259

(*g*) PARTNERSHIPS, SUIT CONCERNING.

14.—*Suit by one member of an undivided Hindu family—Non-joinder of other persons interested in a family business—Amendment of plaint—Limitation.*] In 1887, the plaintiff appointed the defendant to serve for three years as manager of a business in Moulmein, which was the business of the undivided Hindu family to which the plaintiff belonged. In 1893, the plaintiff, without joining the other members of his family, sued the defendant for damages for breach of the contract of service:—*Held* (1) that the suit was not maintainable in the absence from the record of the other partners in the business; (2) that under the circumstances, the name of the plaintiff, in the cause-title, could not be taken as designating his partners also; (3) that by reason of the fact that the amendment might deprive the defendants of the defence of limitation and of the other circumstances in the case, the plaintiff should not be allowed on appeal to amend the plaint by bringing his partners on to the record. ALAGAPPA CHETTI *v.* VELLIAN CHETTI.

[18 Mad. 33

15.—*Suit for debt due to partnership after death of partner—Right of representative of deceased partner to sue for a specific asset—Contract Act (IX of 1872), s. 45.*] On the death of a partner leaving a surviving partner still carrying on the business of the firm, the representative of the deceased partner may sue for and recover debts due to the firm, although the firm's assets in the hands of the surviving partner are already sufficient to answer all the claims made on behalf of the deceased partner, and although the surviving partner is willing to satisfy such claims and disapproves of, and refuses to join in, the suit brought by the representative of the deceased partner. AGA GULAM HUSAIN *v.* SASSOON.

[21 Bom. 412

(*h*) PURCHASERS.

16.—*Suit by auction-purchasers at sale for arrears of revenue to annul incumbrances—Act XI of 1859, s. 37—Suit to cancel under-tenures.*] The right that is given by s. 37 of Act XI of 1859 to the auction-purchaser of an entire estate in the permanently-settled districts of Bengal, Behar and Orissa, sold for arrears of revenue, to avoid

PARTIES—*continued.*

(1) PARTIES TO SUITS—*concluded.*

(*h*) PURCHASERS—*concluded.*

and annul an under-tenure is a right that must be exercised by all the purchasers jointly where there are more purchasers than one. JATRA MOHUN SEN *v.* AUKHIL CHANDRA CHOWDHRY.

[24 Calc. 334

(*i*) SPECIFIC PERFORMANCE.

17.—*Purchaser from party to contract of which specific performance was claimed.*] The mother and guardian of a Hindu minor entered into a contract for the sale of his land. The vendee sued the minor by his mother and guardian *ad litem* for specific performance of the contract and for possession, and joined as a defendant a subsequent purchaser from the mother and guardian:—*Held*, that as the cause of action (the right to obtain a sale-deed and possession) concerned both the defendants, and entitled the plaintiff to relief against both, the purchaser was rightly joined as a party. *Luckamsey Ookerda* v. *Fazulla Cassumbhoy*, I. L. R. 5 Bom. 177, distinguished. *Mokund Lall* v. *Chotay Lall*, I. L. R. 10 Calc. 1061, referred to. KRISHNASAMI *v.* SUNDARAPPAYYAR.

[18 Mad. 415

18.—*Suit for specific performance of agreement to partition—Civil Procedure Code, s. 28.*] In a suit for specific performance of an agreement by the members of a joint family for partition:—*Held*, with reference to s. 28 of the Civil Procedure Code, that the third defendant, a minor, was properly included as a party to the suit, though he was not a party to the arrangement. ALAGAPPA MUDALIAR *v.* SIVARAMASUNDARA MUDALIAR.

[19 Mad. 211

(2) SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

19.—*Suit by numerous plaintiffs—Civil Procedure Code (1882), s. 30—Leave to institute suit—Right of suit.*] Section 30 of the Civil Procedure Code does not require an "express" permission to be recorded by the Court, but if such permission can be well gathered from the proceedings of the Court in which the suit was instituted, an Appellate Court may (where an objection that no permission was given is taken on appeal) infer from such proceedings that permission was really granted. The *dictum* of STUART, C. J., in *Hira Lal* v. *Bhairon*, I. L. R. 5 All. 602, dissented from. DHUNPUT SINGH *v.* PARESH NATH SINGH.

[21 Calc. 180

20.—*Civil Procedure Code (1882), s. 30—Leave to institute suit when to be given.*] In cases where leave under s. 30 of the Civil Procedure Code is necessary, such leave must be obtained before the suit is brought and cannot be given subsequently. HARADHONE DASS *v.* RAMDOYAL RAI.

[21 Calc. 181 note.

PARTIES—*continued.*

(2) SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*continued.*

NITYANUND GHOSE *v.* MOHENDRO KRISTO GHOSE.

[21 Calc. 181 note

21.—*Civil Procedure Code* (1882), *s.* 30—*Leave to institute suit when to be given.*] In a suit brought under s. 30 of the Civil Procedure Code, the permission of the Court required by that section may be given subsequently to the filing of the suit. FERNANDEZ *v.* RODRIGUES.

[21 Bom. 784

22.—*Civil Procedure Code* (1882), *s.* 30—*Burial ground — Land belonging in common to all the Mahomedan inhabitants of a village —Encroachment by some of the Mahomedans—Right of suit of some members of a community.*] Where certain Mahomedans of a village brought a suit against other Mahomedans of the same village for the removal of a wall built by the defendants upon land which was found to belong in common to all the Mahomedan inhabitants of the village for the purpose of a burial ground, the Judge, in appeal, dismissed the suit on the grounds that all the Mahomedans were not joined as parties to the suit, and that the plaintiffs had not obtained the permission of the first Court to file the suit under s. 30 of the Civil Procedure Code (Act XIV of 1882). On second appeal:—*Held*, reversing the decree, that s. 30 of the Civil Procedure Code was not applicable to the suit, which must be regarded as one in which the plaintiffs claimed to restrain the defendants from violating the common interest they all had in the land. TANUDIN *v.* PANDU.

[18 Bom. 699

23.—*Civil Procedure Code* (1882), *s.* 30—*Suit by some of the tenants on an estate on behalf of all the tenants to enforce rights against purchaser.*] Section 30 of the Civil Procedure Code (Act XIV of 1882) authorises some of the ryots of a village to sue the proprietor of it for themselves, and the other ryots for a declaration of their general rights, and for an injunction restraining the proprietor from interfering with their enjoyment of those rights. *Phillips* v. *Hudson*, L. R. 2 Ch. 243; *Smith* v. *Earl Brownlow* L. R. 9 Eq. 241; and *The Mayor of York* v. *Pilkington*, 1 Atk. 282, followed. *Hallows* v. *Fernie*, L. R. 3 Ch. 467, referred to and distinguished. AHMEDBHOY HABIBBHOY *v.* BALKRISHNA MUKUND.

[19 Bom. 391

24.—*Persons having the same interest in one cause—Civil Procedure Code* (1882), *ss.* 26 *and* 30.] In a suit for the removal of masonry structures raised by one member of a community of Hindu priests upon a certain platform, on which every member of the community had individual right to perform religious rites, praying also for a declaration and injunction in connection with such removal, the plaintiffs were seven persons claiming relief as the *panch* or committee representing the whole community, and also in their individual capacity. It was found by the Court that the

PARTIES—*continued.*

(2) SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*concluded.*

plaintiffs did not constitute the *panch*, and that they did not in that character represent the community:—*Held*, that s. 26 of the Civil Procedure Code (1882) was only an enabling section; it allowed the plaintiffs to bring a joint action; and should not be read as though all persons of the community *must* be joined as plaintiffs:—*Held*, also, that s. 30 of the Code is an enabling section, and did not debar the plaintiffs from suing in their own right in this case. BAIJU LAL PARBATIA *v.* BULAK LAL PATHUK.

[24 Calc. 385

(3) ADDING PARTIES TO SUITS.

(*a*) PLAINTIFFS.

25.—*Joinder of a party co-plaintiff having interest in a suit in which original plaintiff is found to have no interest—Civil Procedure Code* (1882), *s.* 32.] If a plaintiff at the time he brings his suit has no interest in the subject-matter thereof, the joinder of a person as co-plaintiff who has an interest cannot alter the plaintiff's position or confer on him any right of suit. BHANU TUKARAM SHET *v.* KASHINATH PAND SHET.

[20 Bom. 537

26.—*Adding as plaintiff a defendant who has assigned his interest in suit where original plaintiff has no right of suit—Civil Procedure Code* (1882), *ss.* 27 *and* 32.] A defendant who has assigned all his rights in the subject-matter of the suit, and has no longer any interest in it, has no right to be made a co-plaintiff. A plaintiff who has no right of action when he brings his suit cannot remedy the defect and acquire the right by joining with him persons who have the right of action. ABDUL HAK *v.* GULAM JILANI.

[20 Bom. 677

27.—*Civil Procedure Code* (1882), *s.* 32—*Suit by benamidar.*] A mortgage bond was executed ostensibly in favour of *R*, but *J* was the real mortgagee. A suit was brought by *R*, the *benamidar*, to enforce the bond; *J*, the real mortgagee, made over the debt on a date previous to the suit, but executed the formal deed of assignment on a date subsequent thereto. The assignees were then added as plaintiffs to the suit:—*Held*, that a *benamidar* may sue, and, distinguishing the case of *Chunder Coomar Roy* v. *Gocool Chunder Bhuttacharjee*, I. L. R. 6 Calc. 370, that the assignees were rightly added as plaintiffs under s. 32 of the Civil Procedure Code:—*Held*, also, that s. 32 is wide enough to meet every case of defect of parties; and, further, that the power to add parties must be exercised with reference to the interests which those parties have at the time when the addition is being considered. BHOLA PERSHAD *v.* RAM LALL.

[24 Calc. 34

(*b*) DEFENDANTS.

28.—*Civil Procedure Code* (1882), *s.* 32—*Suit for property wrongly sold in execution —Person claiming under distinct title.*] An order for sale was

PARTIES—*continued.*

ADDING PARTIES TO SUITS—*continued.*

(*b*) DEFENDANTS—*concluded.*

made in execution of a decree. A party claiming the property objected. His objection was overruled by the Court of first instance. He appealed to the High Court. The High Court held that the property ordered to be sold was not the property included in the mortgage on which the decree for sale was made, and was not property which could be sold under that decree. In the meantime the sale had taken place. Thereupon the owner of the property, which the High Court had held on appeal was not saleable, brought a suit and made the decree-holders and auction-purchaser parties to it, and claimed as against them his property:—*Held*, that it was not competent to the Court, acting under s. 32 of the Code of Civil Procedure, to introduce into this suit as a defendant a person who claimed the property in suit by a title quite distinct from that under which any of the parties to the suit claimed. KALIAN RAI *v.* RAM RATAN.

[18 All. 306

29.—*Civil Procedure Code* (1882), *s.* 32—*Court adding a defendant—Limitation.*] No question of limitation arises where a Court, of its own motion, under s. 32 of the Civil Procedure Code, adds a party defendant to a suit. *Oriental Bank Corporation* v. *Charriol*, I. L. R. 12 Calc. 642, followed. GRISH CHUNDER SASMAL *v.* DWARKA NATH DINDA.

[24 Calc. 640

(*c*) RESPONDENTS.

30.—*Civil Procedure Code* (1882), *s.* 559—*Addition of a party in second appeal.*] A Court cannot, in a second appeal, act under s. 559 of the Code of Civil Procedure, and add a party as a respondent unless such party was a party to the appeal below, and this notwithstanding that he was a party to the suit in the Court of first instance. CHUNNI *v.* LALA RAM.

[16 All. 5

31.—*Civil Procedure Code* (1882), *ss.* 32, 559 *and* 587—*Addition of parties on second appeal—Appellate Court, Power of.*] The Court on second appeal is competent to bring on the record persons who had been originally joined in the suit, but were not joined in the lower Appellate Court. *Chunni* v. *Lala Ram*, I. L. R. 16 All. 5, dissented from. PAYA MATATHIL APPU *v.* KOVAMEL AMINA.

[19 Mad. 151

(*d*) PROCEDURE.

32.—*Party added in appeal—Civil Procedure Code, s.* 32—*Party added in appeal who was not a party to the suit nor a representative of such a a party—Remand.*] When a Court hearing an appeal is of opinion that a person not a party to the suit and not entitled to be brought on the record in a representative capacity should be a party to the record, its proper course is to remand the case to the Court of first instance, and to direct that Court to bring on the particular person as a defendant, or as a plaintiff if he consents, give him time to file his statement and opportunity to produce his evidence, and try the issues raised between him and the opposite side. MIHIN LAL *v.* INTIAZ ALI.

[18 All. 332

PARTIES—*continued.*

(3) ADDING PARTIES TO SUITS—*concluded.*

(*d*) PROCEDURE—*concluded.*

(4) STRIKING OFF PARTIES.

(*a*) DEFENDANTS.

33.—*Civil Procedure Code* (1882), *s.* 32—*Removal of name of defendant from record.*] An order striking the name of a defendant off the record of a suit cannot be made under s. 32 of the Code of Civil Procedure at a period subsequent to the first hearing of the suit. ABBASI BEGAM *v.* IMDADI JAN.

[18 All. 53

(5) SUBSTITUTION OF PARTIES.

(*a*) GENERALLY.

34.—*Substitution of parties in execution proceedings after appeal—Representatives of judgment-debtor — Civil Procedure Code* (1882), *ss.* 361 *to* 372.] The Civil Procedure Code does not contemplate the representatives of the judgment-debtor being placed on the record after the appellate decree has been passed. There is no express provision for it in the sections relating to execution. Sections 361 to 372 relate to changes during suit, and speak only of "plaintiffs" and "defendants"—terms which seem to show that they were only intended to apply to proceedings up to final determination by the appellate decree and not to proceedings in execution between the judgment-creditor and judgment-debtor. HIRACHAND HARJIVANDAS *v.* KASTURCHAND KASIDAS.

[18 Bom. 224

35.—*"Legal representative"—Civil Procedure Code, s.* 365—*Abatement of suit or appeal.*] The words "the legal representative" in s. 365 of the Code of Civil Procedure must, where there are more than one legal representative, be read in the plural. Where only one has been added as a party, the suit or appeal would abate. In the case of an appeal, either all the representatives of the deceased appellant should have been brought upon the record as appellants, or if any had refused to be joined as appellants, they should have been brought on as respondents. GHAMANDI LAL *v.* AMIR BEGAM.

[16 All. 211

(*b*) PLAINTIFFS.

36.—*Civil Procedure Code* (1882), *ss.* 365 *and* 367—*Representation of a deceased plaintiff.*] Section 365 of the Code of Civil Procedure presupposes that the party claiming to represent a deceased plaintiff is his legal representative, but, if the representative character is denied, or when two or more persons claim it, the proce-

PARTIES—*continued.*

(5) SUBSTITUTION OF PARTIES—*continued.*

(*b*) PLAINTIFFS—*concluded.*

dure prescribed by s. 367 of the Code should be followed. OULA *v.* BEEPATHEE.

[17 Mad. 209

37—*Dekhan Agriculturists Act* (*XVII of* 1879), *ss.* 49 *and* 74—*Conciliation agreement forwarded to be filed in Court—Death of plaintiff—Substitution by the conciliator of the name of the deceased's heir on the return of the agreement by the Subordinate Judge—Practice.*] A plaintiff applied to a conciliator appointed under the Dekhan Agriculturists Relief Act (XVII of 1879) for an amicable settlement of a dispute between himself and the defendant, and came to an agreement disposing of the matter which was duly forwarded to the Subordinate Judge to be filed in Court. On receipt of the agreement, the Subordinate Judge issued notices to the parties to show cause why the agreement should not be filed, and was, on the day of hearing, informed that the agreement could not be filed owing to plaintiff's death. The agreement was then returned to the conciliator, who entered therein the name of the deceased plaintiff's heir and forwarded it to the Subordinate Judge. A question having thereupon arisen as to whether the conciliator could enter on the record the name of the heir of the deceased plaintiff:—*Held*, that although there is no provision in the Dekhan Agriculturists Relief Act empowering a conciliator to enter the name of the heir of a party, and Government have not apparently under s. 49 (*a*) of the Act made any rules regulating the procedure before conciliators in this respect, yet when a Subordinate Judge is seized of a conciliation agreement, there is a proceeding before him under the Act. He should therefore under s. 74 of the Act, follow the provisions of the Civil Procedure Code (Act XIV of 1882) in regard to placing on the record the heirs of the deceased parties. NARAYANDAS SAKHARAM *v.* KONDI.

[19 Bom. 202

38.—*Representatives of deceased widow—Civil Procedure Code* (1882), *s.* 365—"*Legal representatives*"—*Reversionary heirs of husband.*] On the death of a Hindu heiress, after institution of a suit to recover property belonging to her deceased husband, the reversionary heirs of the husband are her legal representatives to proceed with the suit within the meaning of s. 365 of the Civil Procedure Code. *Ramkishore Chuckerbutty* v. *Kallykanto Chuckerbutty*, I. L. R. 6 Calc. 479, applied; *Katama Natchiar* v. *The Rajah of Shivagunga*, 9 Moo. I. A. 539; and *Hari Nath Chatterjee* v. *Mothurmohun Goswami*, I. L. R. 21 Calc. 8, referred to. PREMMOYI CHOUDHRANI *v.* PREONATH DHUR.

[23 Calc. 636

(*c*) APPELLANTS.

39.—*Civil Procedure Code* (1882), *ss.* 365, 366 *and* 582—*Administrator appointed under Bombay Regulation VIII of* 1827, *s.* 10—*Act XIX of* 1841, *s.* 9—*Administrator-Generals Act* (*II of* 1874), *s.* 18—*Death of appellant—Abatement of appeal.*] An administrator appointed under s. 10 of Bombay Regulation VIII of 1827 does not by such appointment become the legal representative of the deceased, or entitled to continue an appeal filed by him. MALAPA SIDAPU DESAI *v.* DEVI NAIK.

[21 Bom. 102

40.—*Civil Procedure Code* (1882), *s.* 365—*Legal representative—Executor—Death of appellant.*] A *tarwad* in Malabar subject to Marumakkatayam law was reduced in number to two persons, *viz.*, the *karnavan* and his younger brother, the plaintiff. They quarrelled, and the former without the consent of the latter adopted as members of the *tarwad* his son and daughter and her children. On his death the plaintiff sued for possession of the *tarwad* property and for a declaration that the adoptions were invalid:—*Held*, that the plaintiff was entitled to the relief asked for. After an appeal was presented by plaintiff, who had obtained a decree for possession but no other relief, he died leaving a will making certain dispositions of the property to which he was solely entitled on the assumption that the adoptions in question were invalid, and his executor was admitted as his legal representative for prosecuting the appeal. PAYYATH NANU MENON *v.* THIRUTHIPALLI RAMAN MENON.

[20 Mad. 51

(*d*) RESPONDENTS.

41.—*Devolution of interest during pendency of suit—Assignment of decree prior to appeal—Application to substitute name of assignee as respondent to appeal—"Suit"—Civil Procedure Code* (1882), *s.* 372.] An application was made by an appellant to substitute for the name of the person originally named as respondent to the appeal the name of a person to whom the decree had been assigned before the filing of the appeal, such application being made more than two years after notice of the assignment had reached the appellant. The person whose name was so sought to be substituted as respondent objected to being placed upon the record of the appeal:—*Held*, that the name of the proposed respondent should not be placed on the record. *Semble:* That s. 372 of the Code of Civil Procedure does not apply to a case where the devolution of interest occurs between the time of the passing of a decree and the time of the filing of an appeal from that decree. COLLECTOR OF MUZAFFARNAGAR *v.* HUSAINI BEGUM.

[18 All. 86

42.—*Devolution of interest pending appeal—Array of parties in appeal—Civil Procedure Code* (1882), *ss.* 372 *and* 382—*Application for review.*] *Held*, that s. 372 of the Code of Civil Procedure applies as well to the case of a devolution of interest pending an appeal as to the case of a devolution of interest pending a suit:—*Held*, also,

PARTIES—*concluded.*

(5) SUBSTITUTION OF PARTIES—*concluded.*

(*d*) RESPONDENTS—*concluded.*

that a person may, under s. 372, be added or substituted as a party either on his own application or on the application of one of the parties already on the record:—*Held*, also, that an application by a respondent to an appeal, whose interest had at one time been represented by an official receiver, to replace upon the record of the appeal as a party respondent the name of such official receiver, which had been struck off owing to a misrepresentation of fact, might be treated as an application for review of the order striking off the name of the official receiver. IN THE MATTER OF THE PETITION OF SARAT CHANDRA SINGH. GOKAL CHAND *v.* SARAT CHANDRA SINGH.

[18 All. 285

PARTITION.

Col.

1. Right to Partition ... 925
2. Jurisdiction of Civil Courts in Suits respecting Partition ... 926
3. Nature of Proceedings ... 927

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

[21 Calc. 590
[L. R. 21 I. A. 47

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[20 Bom. 467

See COSTS—SPECIAL CASES—PARTITION.

[21 Calc. 904

See DECREE—FORM OF DECREE—PARTITION.

[18 Mad. 73

See DECREE—FORM OF DECREE—POSSESSION.

[20 Bom. 467

See CASES UNDER HINDU LAW—PARTITION.

See MALABAR LAW—PARTITION.

[17 Mad. 184

See MESNE PROFITS—RIGHT TO, AND LIABILITY FOR, MESNE PROFITS.

[19 Bom. 532

See MORTGAGE — REDEMPTION — REDEMPTION OF PORTION OF PROPERTY.

[20 Mad. 295

See RIGHT OF SUIT—CO-SHARERS.

[18 Bom. 611

——, Decree in suit for.

See APPEAL—DECREES.

[23 Calc. 279
[24 Calc. 725

PARTITION—*continued.*

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[19 Bom. 532

See DECREE—FORM OF DECREE—PARTITION.

[18 Mad. 73

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION.

[19 All. 194

——, Deed of.

See ONUS OF PROOF—DEED, EFFECT AND OPERATION OF.

[25 Calc. 78
[L. R. 24 I. A. 186

See STAMP ACT, SCH. I, ART. 54.

[18 Mad. 233

——, Suit to set aside.

See HINDU LAW—GUARDIAN—POWERS OF GUARDIANS.

[19 Bom. 593

See LIMITATION ACT, ART. 91.

[19 Bom. 593

——, Effect of.

See MALABAR LAW—JOINT FAMILY.

[18 Mad. 451, 452 note

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[17 All. 226

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.

[24 Calc. 887

See SALE IN EXECUTION OF DECREE—INVALID SALES — EXECUTION AGAINST PROPERTY NOT COVERED BY DECREE.

[18 Mad. 451, 452 note

——, Liability to.

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[19 Mad. 211

——, Property excluded from.

See LIMITATION ACT, ART. 127.

[18 Mad. 418

——, Suit for.

See ENDOWMENT.

[17 Mad. 406

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION.

[20 Bom. 351

PARTITION—*continued.*

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[21 Bom. 619

See PLEADER—REMUNERATION.

[21 Bom. 42

See RES JUDICATA—ADJUDICATIONS.

[19 Mad. 290

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[18 All. 325

See VALUATION OF SUIT—SUITS.

[18 Bom. 209

[20 Mad. 289

—— under Bengal Act VIII of 1876.

See PENAL CODE, S. 186.

[22 Calc. 286

—— where unnecessary.

See DECREE—FORM OF DECREE—POSSESSION.

[19 Bom. 36

(1) RIGHT TO PARTITION.

1.—*Right of joint occupancy-tenants to partition—Jurisdiction of Civil Court — Parties.*] *Held* that a joint occupancy-tenant is entitled to sue for, and a Civil Court is competent to grant, a decree for partition of the joint occupancy-holding, though, if the zemindar is not made a party to the suit for partition, such decree will not affect the mutual rights and liabilities of the zemindar and the occupancy-tenants as they stood prior to the partition. *Sunder* v. *Parbati*, I. L. R. 12 All. 51; L. R. 16 I. A. 186; *Baring* v. *Nash*, 1 V. and B. 551; *Oomesh Chunder Shaha* v. *Manick Chunder Bonick*, 8 W. R. 128; and *Bhagi* v. *Girdhari*, Weekly Notes, All. (1895) 143, referred to. MUHAMMAD BAKHSH *v.* MANA.

[18 All. 334

2.—*Mortgage of different shares in an undivided area to different mortgagees by usufructuary mortgage—Mortgagee's right of partition "inter se."*] Two mortgagees held separate usufructuary mortgages, the one of a two-thirds share, the other of a one-third share, in an undivided area of *muafi* land granted by the owners of those shares respectively:—*Held*, that one mortgagee could not, in a suit to which neither of the mortgagors was a party, obtain partition of the share morgaged to him. MANGLI PRASAD *v.* ISHRI PRASAD.

[18 All. 476

3.—*Partition between zemindar and patnidars—Partition between parties, one of whom owns interest subordinate to the other.*] The plaintiff was proprietor of an entire estate paying an annual revenue to Government of Rs. 2,144. In 1854, his father gave a *patni* lease of an undivided six annas share of the estate to the defendants' predecessors in title. The plaintiffs alleged that the land being held *ijmali*, although he and the defendants collected separately from the tenants their respective shares of the rent, difficulty and inconvenience had arisen in the management of the property, and he therefore sued to have his ten annas share of the land divided by metes and bounds from the six annas share of the *patnidars*, the land of the entire estate remaining liable as before for the entire amount of the Government revenue payable in respect of it:—*Held*, by the Full Bench, that the plaintiff was entitled to a decree for partition. HEMADRI NATH KHAN *v.* RAMANI KANTA ROY.

[24 Calc. 575

4.—*Right of co-sharers—Inam village—Right of management by co-sharers.*] Property consisting of an ordinary *inam* village and a cash allowance payable out of the revenue of another village is liable to partition at the suit of a co-sharer, except when it is held on *saranjam* or other impartible tenure, or where the terms of the original grant impose a condition upon its enjoyment that the management shall rest with a particular branch of the family of the grantees; and possibly a long-continued practice from which a family custom may be inferred, may operate to bring about the same result. GOPAL HARI JOSHI *v.* RAMAKANT RANGNATH JOSHI.

[21 Bom. 458

(2) JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION.

5.—*Suit for partition of lands in different estates—Assam Land and Revenue Regulation (I of 1886), s. 154, cl. (e), and s. 96.*] In a suit for partition, without division of revenue, of certain lands held jointly by the parties in four different estates governed by the Assam Land and Revenue Regulation (I of 1886), *held* that although the division asked for may not include all the lands of each of the four estates, still such division would result in a division of each of those estates, the lands left out forming one portion and the lands sought to be divided forming another. The suit therefore was one for an "imperfect partition" within the definition in s. 96 of the Assam Land and Revenue Regulation, and s. 154, cl. (*e*) of that Regulation, barred the jurisdiction of Civil Courts in such a suit. ABDUL KHALIQ AHMED *v.* ABDUL KHALIQ CHOWDHRY.

[23 Calc. 514

6.—*Suit for partition—"Perfect" and "imperfect" partition—Entire estate—Assam Land and Revenue Regulation (I of 1886), ss. 96, 97 and 154.*] An estate does not cease to be an entire estate within the meaning of the Assam Land and Revenue Regulation (I of 1886) because a few plots of land are common to it and some other estate, or because they are *brahmutter* or *debutter*, or because they are held in some undefined way

PARTITION—*continued.*

(2) JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION—*concluded.*

jointly with other persons. Where a suit was brought for the partition of an estate, excluding certain portions as being *brahmutter* or *debutter*, or as being held jointly by third persons how or in what capacity not being stated :—*Held*, that the jurisdiction of the Civil Court was barred by s. 154 of the Regulation. SARAT CHANDRA PURKAYESTHA *v.* PROKASH CHUNDRA DAS CHOWDHURY.

[24 Calc. 751

7.—*Power of Civil Court to appoint Commissioner—Civil Procedure Code* (1882), *s.* 265—*Collector.*] In a suit brought in the Civil Court for a partition of the lands in a revenue-paying estate, the Court has no power to appoint a Commissioner to make the partition ; it is bound under s. 265 of the Civil Procedure Code to have the partition made by the Collector according to the law for the time being in force for partition of estates. *Debi Singh* v. *Sheo Lall Singh*, I. L. R. 16 Calc. 203, distinguished. MEHERBAN RAWOOT *v.* BEHARI LAL BARIK.

[23 Calc. 679

8.—*Estates Partition Act (Bengal Act VIII of 1876)—Partition of revenue-paying estate—Code of Civil Procedure* (1882), *ss.* 265 *and* 396.] Section 265 of the Code of Civil Procedure does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for. A Civil Court therefore has jurisdiction to decree partition in such a case ; and a suit for possession, after partition, of a share in part of an undivided estate, in which part alone the plaintiff has a share, is maintainable in a Civil Court if no division of revenue is sought. *Debi Singh* v. *Sheo Lal Singh*, I. L. R. 16 Calc. 203, approved and followed ; *Meherban Rawoot* v. *Behari Lall Barik*, I. L. R. 23 Calc. 679, overruled. JOGODISHURY DEBEA *v.* KAILASH CHUNDRA LAHIRY.

[24 Calc. 725

9.—*Transfer of decree for partition to Collector for execution—Partition by Collector—Civil Procedure Code* (1882), *s.* 265—*Jurisdiction of Civil Court to hear objections to the division ordered by Collector.*] Where a decree for partition of an estate has been transmitted by the District Court to the Collector for execution under s. 265 Civil Procedure Code, the Court that made the decree is not deprived of its judicial power to hear and decide objections to the division of the estate made by the Collector. CHINNA SEETAYYA *v.* KRISHNAVANAMMA.

[19 Mad. 435

(3) NATURE OF PROCEEDINGS.

10.—*Decree in suit for partition—Code of Civil Procedure* (1882), *s.* 396—*Application for effecting partition—Limitation Act* (*XV of* 1877), *Sch. II, Arts.* 178 *and* 179.] Plaintiff obtained a decree for partition in 1885, and first made an

PARTITION—*concluded.*

(3) NATURE OF PROCEEDINGS—*concluded.*

application to have the partition effected by an arbitrator in 1886. This application was struck off, and a second application was made on the 23rd July, 1888. The arbitrator then declined to act, and the application was struck off. The present application was made on the 1st August, 1891, and an objection was raised that more than three years having elapsed from the date of the previous application, the present one was barred under Art. 179 of Sch. II of the Limitation Act. The lower Court of appeal held that Art. 178, and not Art. 179, applied to the case, but that the plaintiff having applied within three years from the date when the arbitrator declined to act, the application was in time:—*Held*, with reference to the provisions of s. 396 of the Code of Civil Procedure that the proceedings for the purpose of effecting the partition were proceedings in the suit itself and not proceedings in execution of the decree ; that no formal application was necessary, the Court being bound to proceed with the suit and make a final decree; and that the application made on the 1st August, 1891, was not one to which limitation was applicable. DWARKA NATH MISSER *v.* BARINDA NATH MISSER.

[22 Calc. 425

PARTNER.

——, Death of.

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.

[21 Bom. 412

——, Suit by administrator of deceased.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[20 Bom. 15

See LIMITATION ACT, S. 17.

[20 Bom. 15

——, Suit by surviving.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[17 Mad. 108

[18 Bom. 394

See LETTERS OF ADMINISTRATION.

[17 Mad. 147

PARTNERSHIP. *Col.*

1. Suits respecting Partnerships ... 929
2. Rights and Liabilities of Partners ... 930

See BOMBAY TOLLS ACT, S. 7.

[20 Bom. 668

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[21 Bom. 205

PARTNERSHIP—*continued.*

See INSOLVENT ACT, s. 9.

[21 Bom. 205

See PARTIES—PARTIES TO SUITS—PARTNERSHIPS, SUITS CONCERNING.

[18 Mad. 33

[21 Bom. 412

See PLAINT—AMENDMENT OF PLAINT.

[18 Mad. 33

——, Adjustment of accounts of.

See RES JUDICATA—MATTERS IN ISSUE.

[22 Calc. 692

——, Dissolution of.

See APPEAL—DECREES.

[23 Calc. 406

See DEBTOR AND CREDITOR.

[20 Mad. 91

——, Suit for accounts of.

See DECREE—FORM OF DECREE—ACCOUNT.

[20 Mad. 313

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[20 Bom. 15

See LIMITATION ACT, s. 17.

[20 Bom. 15

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—PARTNERSHIP ACCOUNT.

[19 All. 513

(1) SUITS RESPECTING PARTNERSHIPS.

1.—*Suits by different partners for specific sums of money on adjustment of accounts—Accounts adjusted by Amin appointed in previous suits—Contract Act, s.* 265—*Plaint, Amendment of, under s.* 53, *Civil Procedure Code,* 1882.] After dissolution of a certain partnership, two separate suits were brought in 1889 by different partners for specific sums of money due to them, and, in the alternative, for such other amount as might be found due on an adjustment of accounts. Objections were raised against these suits on the grounds *inter alia,* (1) that the suits were barred by the provisions of s. 265 of the Indian Contract Act; (2) that separate suits for the same matter were not maintainable; (3) that the suits would not lie in the Munsif's Court; and (4) that accounts having been already adjusted there was no cause of action. The Munsif overruled the first three objections, and held as regards the fourth, that the adjustment pleaded had been ratified by the plaintiffs; he appointed an Amin, who examined the accounts and ascertained the respective claims of the partners, and the plaintiffs in those suits obtained decrees on the basis of the Amin's adjustment of account. The present suits were brought in 1891 by certain other

PARTNERSHIP—*continued.*

(1) SUITS RESPECTING PARTNERSHIPS—*concluded.*

partners, who were defendants in the suits of 1889, on the allegation that the partnership account had been already adjusted by the Amin appointed in the suits of 1889, and that the debts and dues of all parties had been determined by the Court. The plaintiffs prayed for recovery of the amount due to them under the Amin's adjustment, and, in the alternative, for such other relief as might be deemed proper by the Court to grant them against any of the defendants:—*Held* by NORRIS and BANERJEE, JJ. (RAMPINI, J., dissenting), that the suits were correctly framed, and that such defects as there were in the plaint, *viz.*, an incorrect statement as to the dues of all the partners, having been determined in the former suit, and the omission of an alternative prayer for an account, were no bar to the maintenance of the present actions. *Taylor* v. *Shaw,* 2 Sim. & St. 12; *Stupart* v. *Arrowsmith,* 3 Sm. & G. 176; and *Lalla Sheoprosad* v. *Juggarnath,* I. L. R. 10 I. A. 74, referred to; *Prosad Doss Mullick* v. *Russick Lall Mullick,* I. L. R. 7 Calc. 157, distinguished:—*Held,* also, that an amendment of the plaint under s. 53 of the Code of Civil Procedure should be allowed. *Cropper* v. *Smith,* L. R. 26 Ch. D. 700, followed; *Weldon* v. *Neal,* L. R. 19 Q. B. D. 394; *Mohummud Zahoor Ali Khan* v. *Thakooranee Rutta Koer,* 11 Moo. I. A. 468; *Joseph* v. *Solano,* 9 B. L. R. 441; 18 W. R. 424; *Ramdoyal Khan* v. *Ajhoodhia Ram Khan,* I. L. R. 2 Calc. 1; 25 W. R. 425; and *Kurtz* v. *Spence,* L. R. 36 Ch. D. 770, referred to:—*Held,* by RAMPINI, J., that the amendments proposed to be made in the plaint could not be allowed under s. 53 of the Code of Civil Procedure. DHANI RAM SHAHA *v.* BHAGIRATH SHAHA.

[22 Calc. 692

2.—*Advance made by one partner to another in respect of the latter's share of partnership debt—Suit for contribution.*] *A* and *B* were partners. A decree was passed against them for the payment of a certain debt, each partner being liable for the whole sum, and being bound to indemnify the other against the payment of more than his share. *A* paid *B's* share as well as his own, and brought a suit against *B* for contribution. *B* contended that *A's* claim, being in respect of a partnership transaction, ought to be adjusted when the partnership account was settled, and that the suit did not lie:—*Held,* that the advance made by *A* to *B* by paying his share was not an advance to the partnership, but to the other partner in respect of what he had to contribute, and that, consequently, *A* was entitled to contribution from *B*. SUBBARAYUDU *v.* ADINARAYUDU.

[18 Mad. 134

(2) RIGHTS AND LIABILITIES OF PARTNERS.

3.—*Payment to a partner in fraud of his co-partners—Discharge of debt—Constructive notice—Lease taken by agreement in name of one partner.*] The defendants, other than the first defendant, styling themselves the "agricultural association," entered into three rental agreements, two of

PARTNERSHIP—*concluded.*

(2) RIGHTS AND LIABILITIES OF PARTNERS —*concluded.*

them dated April 23rd, 1891, and the third dated June 21st, 1891, with the plaintiffs and the first defendant, for the cultivation of certain lands belonging to an undivided family, of which the plaintiffs and first defendant were members, and took possession of and cultivated the said lands. On the 17th June, 1891, an agreement, of which the second defendant had notice, was entered into between the plaintiffs and first defendant to the effect that the first plaintiff should be the managing member of the family and should be entitled to receive the rent and give receipts for the same. Subsequently, disputes arising between plaintiff and first defendant, the other defendants made payments of rent to first defendant alone:—*Held*, that these payments were not a valid discharge as against the claim of the plaintiffs on its being proved that second defendant had notice of the agreement of the 17th June, and that notice to him must be taken to be notice to his partners, the other defendants. By an agreement between the defendants any one partner was empowered to take a lease; such lease to be binding on all the partners as if executed by them. The leases were not signed by the 13th defendant (now represented by appellants 19, 20 and 21) who was admittedly a partner and took actual part in the management of the affairs of the firm after the leases were executed:—*Held*, that it was intended that the leases should operate as if all the members had executed them, and that the representatives of 13th defendant were bound. CHINNARAMANUJA AYYANGAR *v.* PADMANABHA PILLAIYAN; SORIMUTHU PILLAI *v.* PADMANABHA PILLAIYAN.

[19 Mad. 471

PARTY-WALL.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[19 Mad. 38

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION.

[19 All. 194

PASTURAGE, RIGHT OF.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[21 Bom. 684

See WASTE LANDS.

[19 All. 172

PATEL.

See ILLEGAL GRATIFICATION.

[21 Bom. 517

See SUBORDINATE JUDGE, JURISDICTION OF.

[21 Bom. 773

——, Duties of.

See BOMBAY VILLAGE POLICE ACT.

[19 Bom. 612

PATNIDAR.

See LAND REGISTRATION ACT, S. 38.

[24 Calc. 404

See PARTITION—RIGHT TO PARTITION.

[24 Calc. 575

PAUPER.

——, Application by, for leave to appeal.

See LIMITATION ACT, ART. 170.

[19 Bom. 48

PAUPER APPLICATION.

See LIMITATION ACT, S. 4.

[17 All. 526
[18 All. 206
[20 Bom. 508
[21 Bom. 576
[24 Calc. 889

See PROBATE—TO WHOM GRANTED.

[18 Bom. 237

PAUPER SUIT.

Col.
1. Suits ... 932
2. Appeals ... 934

See LIMITATION ACT, S. 4.

[17 All. 526
[18 All. 206
[20 Bom. 508

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 454

(1) SUITS.

1.—*Civil Procedure Code* (1882), *ss.* 409 *and* 413 *— Application for leave to sue in formâ pauperis —Refusal of such application a bar to subsequent application in the same right—Plea of jurisdiction taken for first time on appeal.*] The plaintiff applied for leave to sue as a pauper for the redemption of a mortgage. As he did not proceed with the application, it was rejected with costs on the 29th November, 1888. On the 4th February, 1890, plaintiff again applied for leave to sue as a pauper for the redemption of the same mortgage. There being no opposition, the application was granted, and was registered as a suit. On the 20th September, 1893, when the suit had been heard nearly to the end, the Government pleader intervened, and applied that it should not be allowed to proceed further until the plaintiff had paid the costs incurred by Government in opposing the first application, which had been rejected. But the plaintiff refused to do so, and thereupon the Subordinate Judge dismissed the suit with costs under s. 413 of the Code of Civil Procedure (Act XIV of 1882), and ordered the plaintiff to pay the Court-fees under s. 412:—*Held*, on appeal (1), that the order rejecting plaintiff's first application was an

PAUPER SUIT—*continued.*

(1) SUITS—*continued.*

order under s. 409 of the Code of Civil Procedure; (2) that both the applications were made in respect of the same right to sue; (3) that the order rejecting the first application operated as a bar under s. 413 of the Code to the entertainment of the second application; and (4) that such bar being one to the jurisdiction of the Court, the Subordinate Judge was not only competent but bound to take notice of it at any stage of the suit. RANCHOD MORAR *v.* BEZANJI EDULJI.

[20 Bom. 86

2.—*Civil Procedure Code* (1882), *ss.* 409 *and* 413—*Application for leave to sue as pauper—Rejection of application — Extension of time granted for payment of Court-fees — Payment of fees after period of limitation for suit has expired —Limitation Act* (*XV of* 1877), *s.* 4.] On the 2nd February, 1890, the plaintiff applied for leave to sue *in formâ pauperis*. After investigation the Court on the 15th July, 1890, refused leave, but on the plaintiff's application granted him time to pay the Court-fees. He paid the fees on the 12th August, 1890. At this date the suit was barred, and the defendant pleaded limitation. The plaintiff contended that the suit should be taken as instituted at the date of his application for leave to sue as a pauper. The lower Court held the suit barred, and dismissed it:—*Held*, confirming the decree, that the plaintiff's application to sue as a pauper having been disposed of under s. 409 of the Civil Procedure Code (Act XIV of 1882), there was no proceeding pending which could be continued and kept alive by the payment of Court-fees. On the rejection of an application for leave to sue as a pauper, the only course open to the applicant is that declared in s. 413, *viz.*, to institute a suit, and the date of the institution of that suit for the purposes of limitation is the actual date thereof. The plaintiff could not then be regarded as a pauper, and s. 4 of the Limitation Act (XV of 1877) would have no application. KESHAV RAMCHANDRA *v.* KRISHNARAO VENKATESH.

[20 Bom. 508

NARAINI KUAR *v.* MAKHAN LAL.

[17 All. 526

ABBASI BEGAM *v.* NANHI BEGAM.

[18 All. 206

3.—*Civil Procedure Code* (1882), *s.* 409—*Procedure—Res judicata — Limitation.*] On hearing a petition under s. 409 for leave to sue *in formâ pauperis*, the Court must decide whether the petitioner has at the date of the petition a subsisting cause of action capable of enforcement, and where the cause of action is barred by *res judicata* or limitation, the petition must fail. VIJENDRA TIRTHA SWAMI *v.* SUDHINDRA TIRTHA SWAMI.

[19 Mad. 197

4.—*Civil Procedure Code* (1882), *s.* 411—*Suit in formâ pauperis—Court-fee payable out of the subject-matter of the suit—Mode of realisation of*

PAUPER SUIT—*continued.*

(1) SUITS—*concluded.*

Court-fee by Government—Execution of decree.] In a suit brought *in formâ pauperis* the plaintiff was successful, and the decree directed that the Court-fee which would have been payable had the suit not been *in formâ pauperis* should be the first charge on the property, the subject-matter of the suit, and should be recoverable from the defendant in the same manner as the costs of the suit:—*Held*, that it was not necessary for Government to bring a separate suit to recover the Court-fee, but that the same might be realised from the property the subject of the suit by proceedings in execution. RAM DAS *v.* SECRETARY OF STATE FOR INDIA.

[18 All. 419

(2) APPEALS.

5.—*Right of appeal by Government—Costs of plaintiff—Decree omitting to order plaintiff to pay Court-fees—Power of Collector to apply under the extraordinary jurisdiction of High Court—Amendment of decree.*] The plaintiff's suit *in formâ pauperis* was rejected by the Subordinate Judge. The decree, however, omitted to order the recovery from the plaintiff of the Court-fees payable on the plaint. The Collector applied to the High Court under its extraordinary jurisdiction for the rectification of the decree. It was contended that, as the omission might have been remedied by an appeal or on review, the Collector could not apply under the extraordinary jurisdiction of the Court:—*Held*, on the authority of *The Collector of Ratnagiri* v. *Janardan*, I. L. R. 6 Bom. 590, that no appeal by Government would lie in the case, and that, in the exercise of its extraordinary jurisdiction, the High Court would rectify the decree by directing the plaintiff to pay the costs of Government. COLLECTOR OF KANARA *v.* RAMBHAT.

[18 Bom. 454

6.—*Civil Procedure Code* (1882), *ss.* 412 *and* 414—*Costs—Appeal in formâ pauperis — Withdrawal of appeal—Right of Government to costs — Compromise of suit pending appeal.*] The plaintiffs filed a suit *in formâ pauperis* to recover possession of certain property. The Court of first instance dismissed the suit. Thereupon the plaintiffs preferred an appeal *in formâ pauperis* to the High Court. Pending the appeal the parties entered into a compromise, under which it was agreed (*inter alia*) that the appeal should be withdrawn, and that the respondent should pay to Government the Court-fees which the plaintiffs were liable to pay both in the first Court and in the Court of appeal. When the appeal came on for hearing, the appellants informed the Court of their intention to withdraw from the appeal. Thereupon the Government pleader intervened, and applied for an order directing the respondent to pay, in accordance with the terms of the compromise, all the costs payable to Government on account of institution fees, &c., in the first Court as well as in the Appellate Court. This application was opposed by both parties. The Government pleader then

PAUPER SUIT—*concluded.*

(2) APPEALS—*concluded.*

moved the Court to dispauper the appellants under s. 414 of the Code of Civil Procedure (Act XIV of 1882):—*Held*, that the appeal having been withdrawn, no order could be made either under s. 412 or under s. 414 of the Code of Civil Procedure:—*Held*, also, that it was not open to the Court to order the respondent to pay any fees on the strength of any agreement between the parties. BAI CHANDABA *v.* KUVER SAHEB BAPU SAHEB.

[18 Bom. 464

PAYMENT INTO COURT.

See COSTS—SPECIAL CASES — PAYMENT INTO COURT.

[21 Bom. 502

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[21 Calc. 566

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREE SATISFIED BEFORE SALE.

[16 All. 5

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION — RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

PAYMENT ON ACCOUNT OF DEBT.

See CASES UNDER LIMITATION ACT, ART. 20.

PAYMENT TO SET ASIDE SALE.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[22 Calc. 800

PAYMENT TO ONE PARTNER.

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS.

[19 Mad. 471

PEDIGREE, PROOF OF.

See EVIDENCE ACT, S. 9.

[18 All. 98

See EVIDENCE ACT, S. 32.

[17 All. 456
[L. R. 22 I. A. 139

PENAL CODE (ACT XLV OF 1860).

—— Prosecution under, by Municipal Commissioners.

See REVISION—CRIMINAL CASES—GENERALLY.

[22 Calc. 131

——, s. 21.

See S. 186.

[22 Calc. 596, 759

PENAL CODE (ACT XLV OF 1860)—*continued.*

——, ss. 23 and 24.

See THEFT.

[22 Calc. 669, 1017

——, s. 40.

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, S. 49.

[18 Bom. 400

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[18 Bom. 400
[18 Mad. 490

——, s. 41.

See PLEADER — REMOVAL, SUSPENSION AND DISMISSAL.

[17 All. 498

——, s. 64.

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, S. 49.

[18 Bom. 400

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[18 Bom. 400
[18 Mad. 490

——, s. 75.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

[17 All. 120, 123

——, s. 84.

See INSANITY.

[22 Calc. 817
[23 Calc. 604

——, s. 97.

See RIOTING.

[24 Calc. 686

——, s. 99.

See S. 332.

[18 All. 246

See PRIVATE DEFENCE, RIGHT OF.

[19 Mad. 349

See RIOTING.

[24 Calc. 686

——, s. 107.

See ABETMENT.

[16 All. 389

——, s. 109.

See BANKERS.

[16 All. 88

PENAL CODE (ACT XLV OF 1860)—*continued.*

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.

[20 Mad. 8

——, **s. 116.**

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL.

[17 All. 498

——, **s. 117.**

See s. 153.

[18 Bom. 758

——, **s. 141.**

See BENGAL EXCISE ACT, s. 4.

[24 Calc. 324

——, **s. 143.**

See s. 186.

[24 Calc. 320

——, **s. 147.**

See s. 332.

[18 All. 246

See CHARGE—FORM OF CHARGE.

[21 Calc. 827

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[24 Calc. 429

See RIOTING.

[24 Calc. 686

See UNLAWFUL ASSEMBLY.

[22 Calc. 276

——, **s. 148.**

See UNLAWFUL ASSEMBLY.

[22 Calc. 276

——, **s. 149.**

See RIOTING.

[24 Calc. 686

See UNLAWFUL ASSEMBLY.

[22 Calc. 276, 306

——, **s. 153.**—*Wantonly giving provocation with intent to cause riot—Abetment of riot by the public—Penal Code, s.* 117.] In August, 1893, a

PENAL CODE (ACT XLV OF 1860)—*continued.*

riot took place in Bombay between Hindus and Mussalmans. The excitement caused by the riot had not entirely subsided, when the accused composed and published a poem, giving an account of the outbreak, and incidentally extolling certain classes of the Hindu community, namely, the Ghatis and Kamatis, for the brave resistance which they had offered to the Mahomedan rioters. The poem extolled the Ghatis and Kamatis, and then followed these lines:—"May God give glory to you, confer joy on you night and day. Fight again for your country's good. Brave, brave are the Kamatis. Why fear for dying, brother, why fear for dying? Sooner or later, but only once, a man has to die." The poem was written in Gujarati, a language not ordinarily spoken by the Ghatis and Kamatis, or even by the Mahomedans. It did not appear that any copies of the work were distributed among the people who had taken part in the riot: nor did any fresh riot take place subsequently to the publication of the work. The accused were prosecuted and convicted under ss. 117 and 153 of the Penal Code (XLV of 1860) on the ground that the lines quoted above, especially the words "Fight again," were a direct instigation to the Ghatis and Kamatis to renew the disturbances:—*Held*, that the meaning of the passages complained of was to be gathered from the whole poem. The general spirit of the poem was clearly in favour of peace and reconciliation. It consisted from beginning to end of a lamentation over the riots, and the destruction and death they had caused, and of repeated counsel to peace and harmony between Hindus and Mahomedans. And there was nothing to indicate that the author's intention was to instigate the Hindus or provoke the Mahomedans to renew the disturbances. The words "Fight again" were, no doubt, objectionable, but it would not be a proper construction of the words to allow them to override the whole context of the work. The composition could not be regarded as an "illegal act," and its publication was not "malignant" or "wanton" within the meaning of s. 153 of the Penal Code. QUEEN-EMPRESS *v.* KAHANJI.

[18 Bom. 758

——, **ss. 159 and 160.**—*Affray—Public place—Chabutra.*] *Held*, that a *chabutra* which was neither a place to which the public had a right of access, nor a place to which the public were ever permitted to have access, was not, though it adjoined a public road, a "public place" within the meaning of s. 159 of the Penal Code QUEEN-EMPRESS *v.* SRI LAL.

[17 All. 166

——, **s. 161.**

See ILLEGAL GRATIFICATION.

[21 Bom. 517

——, **s. 174.**

See CASES UNDER CONTEMPT OF COURT—PENAL CODE, s. 174.

PENAL CODE (ACT XLV OF 1860)—*continued.*

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[18 Bom. 380

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[24 Calc. 320

——, s. 182.

See BENGAL MUNICIPAL ACT, 1884, s. 133.

[22 Calc. 131

See ONUS OF PROOF—DAMAGES.

[19 Bom. 717

1.—s. 186.—*Obstructing public servant in discharge of his public functions—Amin, Power of, to measure lands in butwara proceedings—Public functions—Estates Partition Act (Bengal Act VIII of 1876), ss. 112 and 116.*] The public functions contemplated by s. 186 of the Penal Code mean legal or legitimately authorised public functions, and were not intended to cover any act that a public functionary might choose to take upon himself to perform. A *butwara* Amin, in proceeding to measure certain lands in the course of proceedings connected with the partition of an estate under Bengal Act VIII of 1876, was obstructed by certain persons who claimed the lands and objected to their being measured. The lands were stated in the report of the Amin to be the common land of estate No. 546, and of certain other estates. The persons who obstructed him were not co-sharers in that estate, and contended that the land sought to be measured had been divided amongst the *maliks* of the different estates, and different portions of it had been held separately by them. The persons so obstructing the Amin were charged with an offence under s. 186 of the Penal Code, the Deputy Collector in charge of the *butwara* proceedings being of opinion that s. 112 of the Act applied, and that the Amin was entitled to measure the land. The accused were convicted:—*Held*, that s. 112 is limited to cases where the community of interest in the land in dispute between the proprietors of the estate under partition as a body and the proprietors of other estates is admitted. When this is not admitted, the provisions of s. 116 apply:—*Held*, further, that as there was no evidence to show that such community of interest was admitted, the accused were entitled to the benefit of the doubt, and to have the case treated as one under s. 116, and that, as the procedure laid down in that section had not been followed, the Amin had no power to measure the lands, and could not be said to be a public servant acting in discharge of his public functions, and that the conviction must consequently be set aside. LILLA SINGH *v.* QUEEN-EMPRESS.

[22 Calc. 286

2.—s. 186 and s. 21.—*Obstructing public servant in discharge of public functions—Court peon—Nazir's power of delegation of service of warrant to peon—Civil Procedure Code* (1892), *s.* 251—*Court-Fees Act* (*VII of* 1870), *s.* 22—*Service of warrant of attachment.*] The petitioner was convicted under s. 186 of the Penal Code of obstructing a Civil Court peon, who was attaching his property in execution of a decree; the warrant of attachment was addressed to the Nazir of the Court, who delegated its execution to a peon by an endorsement of the peon's name:—*Held*, the Nazir had authority thus to delegate the execution of the warrant to the peon. The words "to be executed" in s. 251 of the Code of Civil Procedure would seem to imply that it was not intended that the "proper officer" should himself execute all warrants sent to him. And there is nothing in the Code which indicates in any way that warrants, being either warrants of arrest or of attachment, or for distress and sale, are to be executed by the "proper officer," in any manner different from the service of summonses. The Court-Fees Act (VII of 1870) distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices or orders, but also for the execution of other processes, such as warrants of arrest, or of attachment and distress. Though the authority may well be conferred in more clear and explicit terms than are expressed by a mere endorsement by the Nazir of the peon's name, still it is impossible to say that that is not sufficient evidence of the delegation. DHARAM CHAND LAL *v.* QUEEN-EMPRESS.

[22 Calc. 596

3.—s. 186 and s. 21.—*Nazir's power of delegation—Public servant—Peon—Escape from arrest.*] A Nazir has authority to delegate the execution of warrants of arrest. *Dharam Chand Pal* v. *Queen-Empress*, I. L. R. 22 Calc. 596, followed. A peon acting under such delegation is a public servant within the meaning of the definition in s. 21, cl. 4 of the Penal Code. *Quære:* Whether the escape of a prisoner from arrest is an obstruction of a public servant within the meaning of s. 186 of the Penal Code. SHEO PROGASH TEWARI *v.* BHOOP NARAIN PROSAD PATHAK.

[22 Calc. 759

——, s. 186.—*Obstructing public servant in discharge of his public functions—Public servant acting under warrant of arrest not in legal form—Criminal Procedure Code* (1882), *ss.* 75 *and* 80—*Warrant of arrest without signature of Magistrate and notification of substance of warrant—Discharge of public functions.*] A public servant executing a warrant of arrest which is not signed by the Magistrate as required by s. 75 of the Criminal Procedure Code, but only bears his initials, and the substance of which is not notified to the person to be arrested as required by s. 80 of the Code, cannot be said to be acting in the discharge of his public functions in a manner authorised by law. A person obstructing him cannot be convicted under s. 186 of the Penal Code. ABDUL GAFUR *v.* QUEEN-EMPRESS.

[23 Calc. 896.

PENAL CODE (ACT XLV OF 1860)— *continued.*

———, s. 186.—*Illegal issue of warrant of arrest—Code of Criminal Procedure* (1882), *ss.* 76, 81, 90 *and* 160—*Penal Code* (*Act XLV of* 1860), *ss.* 143 *and* 174—*Justifiable assault—Investigation by Police—Power of Magistrate to issue warrant of arrest for production of witness.*] Where a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the Police, and in attempting to execute such warrant, the Police arrested the wrong person and were assaulted in the attempt:—*Held*, that apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a Police-officer, but only before his own Court under ss. 76 and 81 of the Code of Criminal Procedure:—*Held*, also, that as the investigation was held by a Police-officer under Chap. XIV of the Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under s. 160 of the Code of Criminal Procedure, and on failure by her to comply with such order, prosecute her under s. 174 of the Penal Code:—*Held*, further, that the accused were justified in their resistance, and that no offence either under s. 143 or s. 186 of the Penal Code was committed, and that they should be acquitted. QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE.

[24 Calc. 320

———, s. 188.

See NUISANCE — PUBLIC NUISANCE UNDER PENAL CODE.

[19 Mad. 464

———, s. 188.—*Madras Local Boards* (*Madras Act V of* 1884), *ss.* 98 *and* 100—*Disobedience to notice given by President of Local Board.*] The President of a Local Board, acting under Madras Act V of 1884, issued a notice calling upon a person to remove certain encroachments on a public road within ten days:—*Held*, that such a notice was not an order within the meaning of s. 188, Penal Code, and a person neglecting to obey it could not be convicted under that section. QUEEN-EMPRESS *v.* SUBRAMANIAN.

[20 Mad. 1

———, s. 191.

See BANKERS.

[16 All. 88

See FALSE EVIDENCE—GENERALLY.

[19 Mad. 375

———, s. 193.

See COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[22 Calc. 586

PENAL CODE (ACT XLV OF 1860)— *continued.*

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[18 Bom. 377
[17 All. 436

See FALSE EVIDENCE—GENERALLY.

[19 Mad. 375
[19 All. 200

See MARRIAGE ACT, S. 18.

[16 All. 212

———, s. 199.

See BENGAL MUNICIPAL ACT, 1884, S. 133.

[22 Calc. 131

———, s. 201.—*Causing disappearance of evidence of supposed murder—Want of proof of commission of offence.*] Section 201 of the Penal Code applies merely to the person who screens the principal or actual offender and not the principal or actual offender himself. The accused were charged with murder, and also with causing the disappearance of the corpse of the deceased with the intention of screening the murderer from punishment under s. 201 of the Penal Code. Evidence for the prosecution pointed conclusively to one or other of them being the actual murderer; but it was impossible upon the evidence to say which of them caused the death. They were acquitted on the charge of murder, but convicted on the charge under s. 201:—*Held*, that the conviction could not stand. TORAP ALI *v.* QUEEN-EMPRESS.

[22 Calc. 638

———, s. 210.—*Sanction to prosecution—Code of Criminal Procedure* (1882), *s.* 195—*Execution of decree which has been satisfied.*] A decree-holder applied for execution of his decree against the judgment-debtor. The application was dismissed on the ground that the decree had been satisfied out of Court. The judgment-debtor then applied for and obtained sanction to prosecute the decree-holder under s. 210 of the Penal Code:—*Held*, that such sanction must be revoked, because the decree had not been caused to be executed, and therefore no offence under s. 210 of the Penal Code had been committed. SHAMA CHARAN DAS *v.* KASI NAIK.

[23 Calc. 971

———, s. 211.

See COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[22 Calc. 586

See DEFAMATION.

[19 Bom. 51

See FALSE CHARGE.

[16 All. 124
[19 Bom. 51
[20 Mad. 79

PENAL CODE (ACT XLV OF 1860)—*continued.*

See ONUS OF PROOF—DAMAGES.

[19 Bom. 717

——, s. 213.—*Screening an offender.*] Section 213 of the Penal Code is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence. *Queen-Empress* v. *Saminatha*, I.L.R. 14 Mad. 400, followed. GIRISH MYTE *v.* QUEEN-EMPRESS.

[23 Calc. 420

——, s. 218.

See FALSE EVIDENCE — FABRICATING FALSE EVIDENCE.

[19 All. 305

——. s. 224.

See CASES UNDER ESCAPE FROM CUSTODY.

——, s. 268.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[20 Mad. 433

——, s. 269.

See PUBLIC HEALTH, OFFENCE AFFECTING.

[24 Calc. 494

——, s. 279.—*Rash riding on a public way.*] The accused was convicted of rash riding on a public way under s. 279 of the Penal Code (Act XLV of 1860). He contended that his conviction was bad, on the ground that there was no proof that any person was on the road in question at the time when he was alleged to have ridden in a rash or negligent manner:—*Held*, that though there was no such proof it was competent to the Court to take into its consideration the probability of persons using the public way being placed in danger by the act of the accused. The accused's act came within the mischief struck at by s. 279 of the Penal Code and was included within its terms. QUEEN-EMPRESS *v.* HORMUSJI NOWROJI LORD.

[19 Bom. 715

——, s. 283.

See NUISANCE — PUBLIC NUISANCE UNDER PENAL CODE.

[20 Mad. 433

——, s. 290.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[19 Mad. 464

——, ss. 292 and 293.

See OBSCENE PUBLICATION.

[20 Bom. 193

PENAL CODE (ACT XLV OF 1860)—*continued.*

——, s. 296.

See RELIGION, OFFENCES RELATING TO.

[23 Calc. 60

——, s. 297.

See RELIGION, OFFENCES RELATING TO.

[18 All. 395

——, s. 302.

See JURISDICTION OF CRIMINAL COURT —OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

See MURDER.

[19 Mad. 483

——, s. 304.

See CULPABLE HOMICIDE.

[19 Mad. 356
[18 All. 497

——, s. 304A.

See CAUSING DEATH BY NEGLIGENCE.

[16 All. 472

——, s. 317.

See ABANDONMENT OF CHILDREN.

[18 All. 364

——, s. 320.

See GRIEVOUS HURT.

[19 Bom. 247

——, s. 323.

See s. 332.

[18 All. 246

——, s. 325.

See RIOTING.

[24 Calc. 686

——, s. 326.

See GRIEVOUS HURT.

[19 Bom. 247

——, s. 330.

See ABETMENT.

[20 Bom. 394

——, s. 332, and ss. 99, 147 and 323.—*Criminal Procedure Code* (1882), *ss.* 55, 56 and 14—*Public servant in the execution of his duty as such—Arrest without sufficient authority but in good faith—Assault on Police making arrest—Right of private defence.*] A warrant was issued by a Magistrate for the arrest of one *D* under s. 114 of the Code of Criminal Procedure. The warrant

PENAL CODE (ACT XLV OF 1860)—*continued.*

was sent to a certain thana to be executed. It was there, after being copied into a book kept for that purpose at the thana, made over to a particular constable for execution. When the constable to whom the warrant had been made over had left the thana, it was discovered that *D* was in a village other than that in which he had been supposed to be. Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana, endorsed on the back the names of one *N* and some other constables, and, having signed the endorsement, sent *N* and the others out with this paper to arrest *D*. *N* and his companions arrested *D*; but, as they were returning with him in custody, some of *D's* friends, aided by *D* himself, attacked them, rescued *D*, and caused hurt to the Police:—*Held*, that the Police-officers concerned in arresting *D* under the circumstances above described were not acting in the lawful discharge of their duty within the meaning of s. 332 of the Penal Code, so as to render the accused liable to conviction under that section; but inasmuch as they were acting in good faith under the colour of their office, s. 99 of the Penal Code applied, and *D* and his associates might be properly convicted under ss. 147 and 323 of the Code. The words "in the discharge of his duty as such public servant" in the earlier portion of s. 332 of the Penal Code mean in the discharge of a duty imposed by law on such public servant in the particular case, and do not cover an act done by him in good faith under colour of his office. *Queen* v. *Roxburgh*, 12 Cox. C. C. 8, referred to. QUEEN-EMPRESS *v.* DALIP.

[18 All. 246

——, s. 341.

See WRONGFUL RESTRAINT.

[24 Calc. 885

——, s. 342.

See WRONGFUL CONFINEMENT.

[19 Bom. 72

——, s. 353.

See BENGAL EXCISE ACT, s. 4.

[24 Calc. 324

——, s. 363.

See KIDNAPPING.

[19 All. 109

——, ss. 365 and 366.

See CRIMINAL PROCEDURE CODE, s. 238.

[22 Calc. 1006

——, s. 366.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[18 All. 350

PENAL CODE (ACT XLV OF 1860)—*continued.*

——, s. 372.

See s. 373.

[22 Calc. 164

See HINDU LAW—CUSTOM—ADOPTION.

[19 Mad. 127

——, s. 372.—*Letting to hire a girl under sixteen for immoral purpose for one occasion—Prostitution for a course of life—Criminal Procedure Code* (1882), *s.* 273.] A young prostitute under sixteen years of age was brought to a house of assignation by the accused at the request of the complainant and for his supposed use on that one occasion, it not being contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by him for that course of life:—*Held*, that such a letting out by the accused was not within the meaning of s. 372 of the Penal Code, which on the authorities contemplates a case of letting or hiring or other similar transaction by which the possession of a girl is obtained with the intention of employing her habitually for the purpose of indiscriminate sexual intercourse. *Dowlath Bee* v. *Shaik Ali*, 5 Mad. 473, followed. QUEEN-EMPRESS *v.* SUKEE RAUR.

[21 Calc. 97

——, s. 373.

See HINDU LAW—CUSTOM—ADOPTION.

[19 Mad. 127

1.—s. 373.—*Obtaining possession of minor for purposes of prostitution—Offence defined by above section explained.*] To constitute the offence provided for by s. 373 of the Penal Code, it is necessary, first, that a minor under sixteen years of age shall be bought, hired or otherwise obtained possession of, and secondly, that the minor shall be bought, hired or otherwise obtained possession of, with the intent that the same minor, while still under the age of sixteen years, will be employed for the purposes of prostitution, or with the knowledge that it is likely that the said minor while still under the age of sixteen years will be employed or used for an unlawful and immoral purpose. The offence is complete so soon as the obtaining possession, with the requisite intention or knowledge, of the minor is accomplished, though the minor may not enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all. *Deputy Legal Remembrancer* v. *Karuna Baistobi*, I. L. R. 22 Calc. 164, approved. QUEEN-EMPRESS *v.* CHANDA.

[18 All. 24

2.—s. 373 and s. 372.—*Buying minor for purpose of prostitution—Intention, Proof of—Onus of proving guilty intention in case of sale of minor for purpose of prostitution—Evidence Act* (*I of* 1872), *s.* 106.] In order to constitute

PENAL CODE (ACT XLV OF 1860)— *continued.*

an offence under s. 373 of the Penal Code, it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be with reference to employment either immediate or at some definite, and not very remote, future period; but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will, while still a minor under the age of sixteen years, be employed for that purpose, although the point of time for such employment may be remote by reason of her physical incapacity for the purpose. *H*, the father of two girls, twins about a year old, sold one of them to *K*, a prostitute, for Rs. 9, and within ten days of such sale also sold her the other for Rs. 14. *K* was shown to have previously purchased another child whom she had brought up from her infancy, and who was then living with her and leading the life of a prostitute. Both *H* and *K* made confessions as to the guilty knowledge and intention with which the sale of the two children was made. *K's confession* was made within two hours after her arrest, and immediately thereafter she was committed to *hajat* for seven days. On the seventh day, on being brought up for trial before the Deputy Magistrate, she retracted her confession and assigned an innocent reason for her purchase of the girl. *H* and *K* were tried jointly, *H* being charged with an offence under s. 372, *viz.*, selling the girls for the purpose of prostitution, and *K* with an offence under s. 373, *viz.*, buying for the same purpose. Neither was charged with abetting the other. The two confessions were used as evidence, and there was other evidence tending to prove the intention and guilty knowledge. The Deputy Magistrate convicted each of the offence with which they were charged. On appeal the Sessions Judge acquitted *K* on the ground that the offence under s. 373 could not be committed unless the intention was that the minor was to be used for the purpose of prostitution at some definite future time, and that it would be carrying the law too far to hold that the intention had reference to a period some twelve or fourteen years after the purchase when the minor became capable of being used for that purpose:—*Held*, for the reasons above stated, that the acquittal on that ground was erroneous:—*Held*, further, that having regard to the circumstances under which the confession of *K* was given and retracted, it was open to suspicion, and could not safely be acted upon, and that the confession made by *H* was not legally admissible against her as they were not being tried jointly for the same offence:—*Held*, also, that having regard to the provisions of s. 106, Ill. (*a*) of the Evidence Act, and to the fact that there was evidence, apart from the confessions, which tended to show the knowledge and intention which the character and circumstances of the act suggested, the onus lay on *K* to show that the intention was other than that which the act suggested, or that the employment of the girls as prostitutes was not intended till after they had attained the age of sixteen years, and that as she had failed to show this, and the evidence all tended the other way, the acquittal was erroneous and must be reversed. DEPUTY LEGAL REMEMBRANCER *v.* KARUNA BAISTOBI.

[22 Calc. 164

PENAL CODE (ACT XLV OF 1860)— *continued.*

——, s. 376.

See CRIMINAL PROCEDURE CODE, S. 238.

[22 Calc. 1006

——, s. 378.

See CATTLE TRESPASS ACT, S. 22.

[22 Calc. 139

See CASES UNDER THEFT.

——, s. 379.

See THEFT.

[22 Calc. 669, 1017
[18 All. 88

——, s. 395.

See DACOITY.

[16 All. 437

——, s. 396.

See DACOITY.

[16 All. 437
[17 All. 86

——, s. 403.

See CRIMINAL BREACH OF TRUST.

[23 Calc. 372

See CRIMINAL MISAPPROPRIATION.

[18 Bom. 212

——, s. 405.

See CRIMINAL BREACH OF TRUST.

[23 Calc. 372

——, s. 408.

See CHARGE—FORM OF CHARGE.

[24 Calc. 193

See CRIMINAL BREACH OF TRUST.

[22 Calc. 313

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST.

[19 All. 111

——, s. 409.

See BANKERS.

[16 All. 88

See CHARGE—FORM OF CHARGE.

[17 All. 153
[18 All. 116
[24 Calc. 193

PENAL CODE (ACT XLV OF 1860)—*continued.*

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.
[19 Bom. 749

——, s. 411.

See STOLEN PROPERTY, OFFENCES RELATING TO.
[21 Calc. 328
[17 All. 576

——, s. 417.

See BENGAL MUNICIPAL ACT, 1884, S. 133.
[22 Calc. 131

——, s. 418.

See BANKERS.
[16 All. 88

——, s. 426.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
[21 Bom. 536

——, s. 429.—*"Bull" and "Cow," Definitions of—"Any other animal," Meaning of.*] The words "bull" and "cow," in s. 429 of the Penal Code, include the young of those animals. The section specifies the more valuable of the domestic animals, without any regard to age, but in respect of other kinds of animals not so specified, the section would not apply unless the particular animal in question was shown to be of the value of fifty rupees or upwards. HARI MANDLE *v.* JAFAR.
[22 Calc. 457

——, s. 441.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
[21 Bom. 536

See CRIMINAL TRESPASS.
[22 Calc. 123, 391, 994

——, s. 442.

See CRIMINAL TRESPASS.
[22 Calc. 123

——, s. 448.

See CRIMINAL TRESPASS.
[22 Calc. 123
[19 Mad. 240

——, s. 451.

See CRIMINAL TRESPASS.
[19 All. 74

——, s. 456.

See CRIMINAL TRESPASS.
[22 Calc. 391, 994

PENAL CODE (ACT XLV OF 1860)—*continued.*

——, s. 457.

See CRIMINAL TRESPASS.
[22 Calc. 391

See SENTENCE — SENTENCE AFTER PREVIOUS CONVICTION.
[17 All. 120

——, s. 463.

See FORGERY.
[22 Calc. 313

——, s. 464.

See FORGERY.
[22 Calc. 313

——, s. 467.

See ATTEMPT TO COMMIT OFFENCE.
[16 All. 409

See FORGERY.
[22 Calc. 313

——, s. 471.

See FORGERY.
[22 Calc. 313

——, ss. 486 and 487.

See CRIMINAL PROCEDURE CODE, s. 403.
[23 Calc. 174

——, s. 497.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.
[17 Mad. 260

——, s. 499.

See DEFAMATION.
[22 Calc. 46
[18 Bom. 205
[19 Bom. 51, 340, 703

See FALSE CHARGE.
[19 Bom. 51

See ONUS OF PROOF—DAMAGES.
[19 Bom. 717

See STATUTES, CONSTRUCTION OF.
[19 Bom. 340

——, s. 500.

See DEFAMATION.
[22 Calc. 46
[18 Bom. 205
[19 Bom. 51, 340

See FALSE CHARGE.
[19 Bom. 51

——, s. 503.

See CRIMINAL INTIMIDATION.
[20 Bom. 794

PENAL CODE (ACT XLV OF 1860)— *concluded.*

——, s. 506.

See CRIMINAL INTIMIDATION.

[20 Bom. 794

——, s. 509.

See CRIMINAL TRESPASS.

[22 Calc. 391, 994

——, s. 511.

See ATTEMPT TO COMMIT OFFENCE.

[16 All. 409

See BENGAL MUNICIPAL ACT, 1884, s. 133.

[22 Calc. 131

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

[17 All. 120, 123

PENAL SERVITUDE.

See SENTENCE—GENERAL CASES.

[19 Mad. 483

PENALTY

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 49.

[18 Bom. 400

See CONTRACT ACT, s. 74.

[22 Calc. 658

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.

[18 Bom. 400

—— **Payment of.**

See STAMP ACT, s. 39.

[17 Mad. 473

PENSION.

See INSOLVENCY—AFTER-ACQUIRED PROPERTY.

[19 Bom. 232

PENSIONS ACT (XXIII OF 1871).

——, s. 3.

See s. 4.

[L. R. 21 I. A. 148

——, s. 4.

See HEREDITARY OFFICES ACT, s. 13.

[19 Bom. 250

See JURISDICTION OF CIVIL COURT — RENT AND REVENUE SUITS, BOMBAY.

[18 Bom. 525

PENSIONS ACT (XXIII OF 1871)— *concluded.*

1.—s. 4.—*"Civil Court"—Claim to percentage of forest income—Forest Settlement Officer.*] A Forest Settlement Officer has no jurisdiction to entertain a suit in which a claim to a percentage of forest income is made, and such a suit brought by discharged forest *karnams* is barred by s. 4 of the Pensions Act. A Forest Settlement Officer is a Civil Court for the purposes of the Pensions Act. SECRETARY OF STATE FOR INDIA *v.* VYDIA PILLAI.

[17 Mad. 193

2.—s. 4.—*Kulkarni vatan—Suit for partition and declaration of right to a specific share in the vatan and to officiate—Money grant—Vatan consisting exclusively of cash allowance.*] A suit for a declaration that the plaintiffs are *vatandars* of a share of a moiety of a *kulkarni vatan* consisting exclusively of a cash allowance from Government, is not a suit relating to a "money grant" within the contemplation of s. 4 of the Pensions Act (XXIII of 1871). GOVIND SITARAM *v.* BAPUJI MAHADEO.

[18 Bom. 516

3.—s. 4 and s. 6.—*Suit for malikana without certificate of Collector.*] In a suit against the Rajah of Palghat and other members of his family for a declaration of the plaintiff's status as the third Rajah, and to recover a sum of money payable to him as such on account of his share of *malikana*, it appeared that the plaintiff had obtained no certificate under the Pensions Act, 1871, s. 6 :—*Held*, that the suit was not maintainable. ANDI ACHEN *v.* KOMBI ACHEN.

[18 Mad. 187

4.—s. 4 and s. 3.—*Jurisdiction of Civil Court—Certificate of Collector to precede suit for malikana payable by Government.*] A village, part of an estate, had been made over to the Government by parties, who in consideration received a *malikana* in perpetuity, or, in other words, a grant of a portion of the revenue in lieu of their proprietary right :—*Held*, that the right to the *malikana* was, on the construction of ss. 3 and 4 of the Pensions Act (XXIII of 1871), in the absence of a certificate obtained under that Act, excluded from judicial cognizance in this suit. *Vasudev Sada Shiv Nodak* v. *Collector of Ratnagiri*, I. L. R. 2 Bom. 99 ; L. R. 4 I. A. 119 ; and *Naharaval Mohan Singji Joysingji* v. *Government of Bombay*, I. L. R. 5 Bom. 408 ; L. R. 8 I. A. 77, referred to and approved. DEO KUAR *v.* MAN KUAR.

[17 All. 1
[L. R. 21 I. A. 148

——, s. 6.

See s. 4.

[18 Mad. 187

PEON.

See PENAL CODE, s. 186.

[22 Calc. 596, 759

PERJURY.

See CASES UNDER FALSE EVIDENCE.

See RIGHT OF SUIT—FRAUD.

[21 Calc. 612

——, Committal by Civil Court for.

See CRIMINAL PROCEEDINGS.

[18 Bom. 581

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[18 Bom. 581

PERPETUITIES, RULE AGAINST.

—*Application of rule—Succession Act* (*X of* 1865), *s.* 101—*Transfer of Property Act* (*IV of* 1882), *s.* 14—*Moveable property.*] The rule against perpetuities [Indian Succession Act (X of 1865), s. 101, and Transfer of Property Act (IV of 1882), s. 14] applies to moveable as well as immoveable property. COWASJI NOWROJI POCHKHANAWALLA *v.* RUSTOMJI DOSSABHOY SETNA.

[20 Bom. 511

PERSONAL LAW.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[19 Mad. 461

PERSONALTY, LAW RELATING TO.

See ENGLISH LAW.

[24 Calc. 216

PETITION.

——, Amendment of.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[17 Mad. 67

——, Form of.

See BENGAL TENANCY ACT, S. 158.

[21 Calc. 602
[24 Calc. 197

——, Omission in.

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

[17 Mad. 304

PLAINT.

		Col.
1.	Form and Contents of Plaint	... 955
	(*a*) Frame of Suits generally	... 955
	(*b*) Plaintiffs	... 955
2.	Verification and Signature	... 956
3.	Amendment of Plaint	... 957
4.	Rejection of Plaint	... 960
5.	Return of Plaint	... 960

PLAINT—*continued.*

——, Amendment of.

See CIVIL PROCEDURE CODE, S. 424.

[24 Calc. 584

See DAMAGES — MEASURE AND ASSESSMENT OF DAMAGES.

[24 Calc. 124, 177

See HINDU LAW—PARTITION—PARTITION OF PORTION OF PROPERTY.

[18 Bom. 611

See LIMITATION ACT, S. 4.

[19 Bom. 320

See LIMITATION ACT, S. 22.

[18 All. 198

See LIMITATION ACT, ART. 123.

[19 Mad. 425

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[21 Calc. 866

See PARTNERSHIP— SUITS RESPECTING PARTNERSHIPS.

[22 Calc. 692

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT.

[19 All. 324

See REMAND—POWER OF REMAND.

[17 Mad. 187

See RIGHT OF SUIT—CO-SHARERS.

[18 Bom. 611

See VENDOR AND PURCHASER — PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER.

[21 Bom. 827

——, Form of.

See FRAUD—ALLEGING OR PLEADING FRAUD.

[19 Bom. 593

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[17 Mad. 262

——, Presentation of.

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 4.

[19 Bom. 46

See LIMITATION ACT, S. 4.

[19 Bom. 320
[17 All. 526
[20 Bom. 508
[20 Mad. 319

See SUPERINTENDENCE OF HIGH COURT —BOMBAY REGULATION II OF 1827.

[20 Bom. 50

PLAINT—*continued.*

——, Return of.

See MULTIFARIOUSNESS.

[18 All. 131

See MUNSIF, JURISDICTION OF.

[23 Calc. 425

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE.

[20 Bom. 283

See VALUATION OF SUIT—SUITS.

[24 Calc. 661

——, Verification of.

See CIVIL PROCEDURE CODE, s. 432.

[19 All. 510

See WRITTEN STATEMENT.

[22 Calc. 268

(1) FORM AND CONTENTS OF PLAINT.

(*a*) FRAME OF SUITS GENERALLY.

1.—*Suit for reliefs inconsistent with each other—Ground for dismissing suit.*] *Held*, that the fact that a plaintiff claims in his plaint two alternative reliefs which are inconsistent with each other is no ground in itself for the dismissal of the suit. *Iyappa* v. *Ramalakhshmamma*, I. L. R. 13 Mad. 549, dissented from; *Mahomed Buksh Khan* v. *Husseini Bibi*, I. L. R. 15 Calc. 684; L. R. 15 I. A. 81, referred to. JINO *v.* MANON.

[18 All. 125

(*b*) PLAINTIFFS.

2.—*Form of plaint in suit by company in liquidation—Companies Act (VI of 1882), s. 144.*] *Held*, that a plaint in a suit by a bank in liquidation in which the plaintiff was described as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and which was also subscribed and verified in the same terms, was not a valid plaint, having regard to the terms of s. 144 of the Indian Companies Act, 1882, and that the defect could not be cured by amendment. *In re Winterbottom*, L. R. 18 Q. B. D. 446, referred to. GHULAM MUHAMMAD *v.* HIMALAYA BANK.

[17 All. 292

3.—*Suit by Official Liquidator—Description of plaintiff—Companies Act (VI of 1882), s. 144—Civil Procedure Code, s. 53—Amendment of plaint—Limitation Act (XV of 1877), s. 22.*] In a suit to recover a debt to a company which had gone into liquidation, the plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and the plaint was signed and verified in the same terms. On objection taken by the defendant, the plaint was allowed to be amended, but after the period of limitation prescribed for the suit had expired, so as to read "The Himalaya Bank, Limited, in liquidation, plaintiff":—*Held* by the Full Bench that the plaint as originally filed was in substantial compliance with the provisions of Act

PLAINT—*continued.*

(1) FORM AND CONTENTS OF PLAINT—*continued.*

(*b*) PLAINTIFFS—*concluded.*

VI of 1882; and that, even if it might be considered that the amendment made was necessary, such amendment did not introduce a new plaintiff into the suit so as to let in the operation of s. 22 of Act XV of 1877. *Ghulam Muhammad* v. *Himalaya Bank*, I. L. R. 17 All. 292, overruled; *In re Winterbottom*, L. R. 18 Q. B. D. 446, distinguished. MUHAMMAD YUSUF *v.* HIMALAYA BANK.

[18 All. 198

4.—*Suit brought in name of idol of temple.*] A suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple; the manager is the proper person to be plaintiff in the suit. THAKUR RAGHUNATHJI MAHARAJ *v.* SHAH LAL CHAND.

[19 All. 330

(2) VERIFICATION AND SIGNATURE.

5.—*Civil Procedure Code* (1882), *ss.* 51 *and* 435—*Principal officer of a corporation of company—Verification of plaint by acting manager.*] The manager at Lucknow of the local branch of the Delhi and London Bank was authorised by a power-of-attorney under the seal of the company in London, to sue for debts due to the Bank, and to substitute any person for himself, besides doing other acts of management. A power-of-attorney, executed by him as manager, appointing the accountant of the Bank to be its attorney in Lucknow, did not contain express authority to the person so empowered to sue for debts due to the Bank. The accountant conducted, under this power, the chief business of the branch, and while he was so conducting it, this suit was instituted against defendants, of whom some objected that he was not authorised to sign and verify the plaint:—*Held*, that s. 51, Civil Procedure Code, regulating proceedings by or on behalf of ordinary plaintiffs, did not apply, but that s. 435 was applicable, the acting manager appointed as abovementioned being a principal officer of the Bank Corporation within the meaning of that section. DELHI AND LONDON BANK *v.* OLDHAM.

[21 Calc. 60

[L. R. 20 I. A. 139

6.—*Civil Procedure Code* (1882), *s.* 435—*Corporation—Suit by agent of an unincorporated society.*] A suit in ejectment as against a trespasser was brought by a person signing the plaint as "for and as Superintendent and Principal Officer of the Estate of the Board of Foreign Missions of the Presbyterian Church of New York." The plaintiff was not shown to be a member of the Board, nor did he set up any possessory title of his own:—*Held*, that inasmuch as the Board of Foreign Missions of the Presbyterian Church of New York was not a corporation or company authorised to sue and be sued in the name of an officer or trustee within the meaning of s. 435 of the Code of Civil Procedure, and also

PLAINT—*continued.*

(2) VERIFICATION AND SIGNATURE—*concld.*

as the person signing the plaint in the manner above described did not profess to be suing on his own possessory title to the land in respect of which ejectment was claimed, the suit must be dismissed. *Jaigopal* v. *Kauleshar Rai*, Weekly Notes, All. (1882) 132; *Muhammad Yusuf* v. *Sukhnath*, Weekly Notes, All. (1887) 55; and *Asher* v. *Whitlock*, L. R. 1 Q. B. 1, distinguished. YUSUF BEG *v.* BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH OF NEW YORK IN AMERICA.

[16 All. 420

7.—*Result of defective verification—Amendment—Procedure—Civil Procedure Code* (1882), *ss.* 52, 53 *and* 578—*Irregularity not affecting merits.*] If the verification of a plaint is discovered to be defective at any time whilst the suit is before the Court of first instance, the plaint may be amended by the Court. If such defect be not discovered until the suit comes on appeal before an Appellate Court, such Court may, if it thinks fit, return the plaint to the Court of first instance to be amended by it. But where the defect is such that it is covered by the provisions of s. 578 of the Code of Civil Procedure, there is no necessity for the Appellate Court to take any steps to procure the amendment of the plaint. In any event a defect in the verification of a plaint will not of necessity result in the dismissal of the suit. *Balgobind Das* v. *Ganno Bibi*, Weekly Notes, All. (1896) 75, referred to. A plaint filed by three joint plaintiffs was verified by each in the form:—"The contents of the petition of plaint are true to the best of my knowledge and belief:"—*Held*, that this form of verification, though not free from ambiguity, was in substantial compliance with the provisions of s. 52 of the Code of Civil Procedure. RAJIT RAM *v.* KATESAR NATH.

[18 All. 396

(3) AMENDMENT OF PLAINT.

8.—*Discretion of Judge—Code of Civil Procedure* (1882), *s.* 53.] The amendment of a plaint under s. 53 of the Code of Civil Procedure (Act XIV of 1882), is in the discretion of the Judge, and is not the right of the suitor in all circumstances. It is not enough for a plaintiff to show that the amendment does not alter the character of the suit. TAPIRAM *v.* SADU.

[21 Bom. 570

9.—*Civil Procedure Code, s.* 53—*Limitation—Area of property claimed in suit for pre-emption described as less than the true area.*] A Court is not precluded from returning a plaint for amendment because at the time it is returned for amendment the period of limitation for the suit may have expired. The plaintiff in a suit for pre-emption after filing his plaint discovered that the property in suit had been described by mistake as being of a slightly less area than it was in reality:—*Held*, that the Court had power and ought to have allowed the plaint to be amended, and that the amendment was not precluded by

PLAINT—*continued.*

(3) AMENDMENT OF PLAINT—*continued.*

the fact that at the time when the application for amendment was made, the limitation for the suit had expired:—*Held*, also, that such misdescription would not render the suit liable to the objection that the plaintiff had sought to pre-empt only a part of the property sold. BARKAT-UN-NISSA *v.* MUHAMMAD ASAD ALI.

[17 All. 288

10.—*Civil Procedure Code* (1882), *s.* 53—*Form of plaint in suit by company in liquidation—Companies Act* (*VI of* 1882), *s.* 144—*Limitation.*] *Held*, that a plaint in a suit by a bank in liquidation in which the plaintiff was described as "the Official Liquidator, Himalaya Bank, Limited, in liquidation," and which was also subscribed and verified in the same terms, was not a valid plaint, having regard to the terms of s. 144 of the Indian Companies Act, 1882, and that the defect could not be cured by amendment. *In re Winterbottom*, L. R. 18 Q. B. D. 446, referred to. GHULAM MUHAMMAD *v.* HIMALAYA BANK.

[17 All. 292

11.—*Charges of fraud—General allegations of fraud—Amendment of pluint on appeal—Objection taken for first time on appeal.*] Where a plaintiff seeks relief on the ground of fraud, and the plaint contains general allegations, but no specific instances of the alleged fraud, it ought to be immediately, on presentation, rejected or returned for amendment, as it does not disclose a cause of action. The plaintiff sued to recover damages caused by the defendant's fraud during his management of the plaintiff's estate from 1870 to 1884. The plaint disclosed no specific instances of the fraud imputed to the defendant. The Court of first instance, without going into evidence, rejected the plaintiff's claim on the preliminary ground that the plaintiff had no right to sue during the lifetime of his adoptive mother. In second appeal, the respondent objected that the plaint was defective. The plaintiff's pleader asked for leave to amend it by specifying certain instances of the alleged fraud:—*Held*, that the amendment could not then be allowed, and the suit must fail. KRISHNAJI *v.* WAMNAJI.

[18 Bom. 144

12.—*Suit for rent, Decree for use and occupation in—Civil Procedure Code* (1882), *s.* 53—*Variance between pleading and proof.*] A suit was brought for rent of a *hât* on the basis of a verbal settlement for three years at an annual *jama* of Rs. 370. The defendants denied the settlement. The first Court found for the plaintiff; but, on appeal, an objection having been raised by the defendants that the verbal lease was illegal under the Transfer of Property Act, the suit was dismissed. The plaintiffs contended on appeal that the suit should not have been dismissed, but that they were entitled to a decree for use and occupation:—*Held*, that a decree for use and occupation of the land by the defendants could not be granted in this case, as that would amount to an amendment raising issues of an entirely different character from

PLAINT—*continued.*

(3) AMENDMENT OF PLAINT—*continued.*

those on which the trial was held in the Courts below as a suit for rent, and necessitating a trial upon fresh evidence. Such amendment could not be allowed under s. 53 of the Civil Procedure Code. *Lukhee Kanto Dass Chowdhury* v. *Sumeeruddin Lusker*, 13 B. L. R. 243; 21 W. R. 208; *Eshan Chunder Singh* v. *Shama Churn Bhutto*, 11 Moo. I. A. 20; *Narainee Dossee* v. *Nurrohurry Mohanto*, Marshall 70, referred to. SURENDRA NARAIN SINGH *v.* BHAI LAL THAKUR.

[22 Calc. 752

13.—*Suit by one member of an undivided Hindu family—Non-joinder of other persons interested in a family business.*] In 1887, the plaintiff appointed the defendant to serve for three years as manager of a business in Moulmein, which was the business of the undivided Hindu family to which the plaintiff belonged. In 1893, the plaintiff, without joining the other members of his family, sued the defendant for damages for breach of the contract of service, and it was held that the suit was not maintainable in the absence from the record of the other partners in the business:—*Held*, that by reason of the fact that an amendment of the plaint might deprive the defendants of the defence of limitation and of the other circumstances in the case, the plaintiff should not be allowed on appeal to amend the plaint by bringing his partners on to the record. ALAGAPPA CHETTI *v.* VELLIAN CHETTI.

[18 Mad. 33

14.—*Amendment transforming claim—Suit for rent converted into suit for ejectment—Variance between pleading and proof—Civil Procedure Code, ss. 53 and 562.*] An amendment of a plaint which materially transforms the nature of the claim, cannot be made under s. 53 of the Civil Procedure Code, and certainly not in appeal. Section 53 permits amendment of the plaint before judgment and not after. The larger powers conferred on Appellate Courts by s. 562 do not authorise such a material transformation of a suit in appeal. BAI SHRI MAJIRAJBA *v.* MAGANLAL BHAISHANKAR.

[19 Bom. 303

15.—*Suit brought in the name of the idol of a temple—Amendment allowed to name of manager of temple—Practice.*] A suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple. Where such a suit was so brought, the Court in second appeal allowed the plaint to be amended, on certain conditions, by substituting the name of the person alleged to be the manager of the temple, but without prejudice to any question which might subsequently be raised as to such person's *locus standi* in the suit. THAKUR RAGHUNATHJI MAHARAJ *v.* SHAH LAL CHAND.

[19 All. 330

16.—*Civil Procedure Code* (1882), *ss. 27 and 53—Amendment of plaint by bringing on a new plaintiff on second appeal.*] Plaintiffs sued in 1894 to recover property belonging to the estate of a testator, claiming to be his executors under a will. The property was alleged to have been entrusted by the testator in 1893 to the defendant. The will contained no express appointment of executors, but it provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, and imposed upon them the duty of providing for the maintenance of persons therein named. The adoption having taken place after the institution of the suit:—*Held*, that under the circumstances of the case, the plaint should be amended on second appeal by substituting the adopted son as plaintiff, with one of the present plaintiffs as his next friend. SESHAMMA *v.* CHENNAPPA.

[20 Mad. 467

PLAINT—*concluded.*

(3) AMENDMENT OF PLAINT—*concluded.*

(4) REJECTION OF PLAINT.

17.—*Civil Procedure Code* (1882), *s. 54—Rejection of plaint already registered.*] Certain traders having failed in business, and being indebted to to the defendant under a decree of the District Court of Trichinopoly, entered into a composition with their creditors, and a deed was executed to which the defendant became a party in respect of his judgment-debt. The defendant subsequently applied for execution of this decree. The trustees, to whom the debtors' assets were made over under the deed, together with the debtors, now brought a suit in the same Court for an injunction restraining the defendant from executing or proceeding to execute his decree. The plaint was rejected by the District Judge after it had been registered and numbered and a written statement had been filed:—*Held*, that the Court had jurisdiction to reject the plaint under the Civil Procedure Code, s. 54, at that stage of the suit. VENKATESA TAWKER *v.* RAMASAMI CHETTIAR.

[18 Mad. 338

(5) RETURN OF PLAINT.

18.—*Amendment of plaint by Subordinate Judge and return for presentation in Small Cause Court—Jurisdiction of Subordinate Judge.*] A plaint praying for a declaration that a certain tax was illegal, and also for damages for illegal entry into the plaintiff's house, was presented to the Court of the first class Subordinate Judge of Surat. The Judge amended the plaint by striking out the portion "regarding the reliefs other than the relief for damages," and then holding that the claim for damages would lie only in the Small Cause Court, returned the plaint for presentation in that Court:—*Held*, that the Subordinate Judge was not justified in returning the plaint at that stage of the proceedings. The shape in which the suit was originally instituted is the test of jurisdiction. MOTABHAI MOTILAL *v.* SURAT CITY MUNICIPALITY.

[20 Bom. 675

PLAINTIFF.

See COSTS—SPECIAL CASES—PLAINTIFFS.
[18 Mad. 128

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS.
[20 Bom. 537, 677
[24 Calc. 34

See PARTIES—SUBSTITUTION OF PARTIES —PLAINTIFFS.
[17 Mad. 209
[19 Bom. 202
[23 Calc. 636

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.
[17 All. 292
[18 All. 198
[19 All. 330

See PLAINT—AMENDMENT OF PLAINT.
[20 Mad. 467

——, Death of.

See HINDU LAW — PARTITION — REQUISITES OF PARTITION.
[19 Mad. 345

See REPRESENTATIVE OF DECEASED PERSON.
[19 Mad. 345

See RIGHT OF SUIT—SURVIVAL OF RIGHT.
[22 Calc. 92

——, Description of.

See LIMITATION ACT, s. 22.
[18 All. 198

PLEA.

——, Record of.

See PRACTICE—CRIMINAL CASES—AFFIDAVIT.
[19 Mad. 209

—Qualified plea of guilty — Capital charge—Procedure—Practice.] In capital cases where there is any doubt as to whether an accused person fully understands the meaning and effect of a plea of guilty, it is advisable for the Court to take evidence, and not to convict solely on the plea of the accused. QUEEN-EMPRESS *v.* BHADU.
[19 All. 119

PLEADER.

		Col.
1.	Appointment and Appearance	... 962
2.	Authority to Bind Client	... 964
3.	Remuneration	... 964
4.	Removal, Suspension and Dismissal	... 965

PLEADER—*continued.*

——, Admission by.

See LIMITATION ACT, s. 19 — ACKNOWLEDGMENT OF DEBTS.
[23 Calc. 374
[18 All. 384

——, Appearance of.

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.
[18 All. 119

——, Arrest of.

See ATTACHMENT — ATTACHMENT OF PERSON.
[23 Calc. 128

——, Authority of.

See LIMITATION ACT, s. 19—ACKNOWLEDGMENT OF DEBTS.
[23 Calc. 374
[18 All. 384

See LUNATIC.
[19 Bom. 135

——, Duty of.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.
[23 Calc. 805

——, in District Court.

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 53.
[18 Mad. 183

——, Negligence of.

See COSTS—SPECIAL CASES—PLAINTIFFS.
[18 Mad. 128

——, Privilege of.

See DEFAMATION.
[19 Bom. 340

——, Purchase by, of client's interest.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.
[23 Calc. 805

(1) APPOINTMENT AND APPEARANCE.

1.—*Civil Procedure Code* (1882), *ss.* 36 *and* 37—*Bengal Regulation XXVII of* 1814, *ss.* 13 *and* 21—*Civil Procedure Code* (*Act VIII of* 1859), *ss.* 16, 17 *and* 18—*Pleaders and Mooktears Act* (*XX of* 1865)—*Civil Procedure Code* (*Act X of* 1877), *s.* 39—*Vakalatnamah—Vakalatnamah authorising pleader to present an appeal signed by person having only a verbal authority from the appellant to do so.*] Under the provisions of the Civil Procedure Code (Act XIV of 1882) the appointment of a pleader to make or do any appearance, appli-

PLEADER—*continued.*

1) APPOINTMENT AND APPEARANCE—*continued.*

cation or act in or to a Civil Court must be in writing, and that writing must be executed by the party or by a person acting on his behalf and acting under the authority of a general power of attorney or *mukhtarnamah*, unless the person making the appointment is the "recognised agent" of the party within the definition of s. 37 of the Code. BADRI PRASAD *v.* BHAGWATI DHAR.

[16 All. 240

2.—*Civil Procedure Code* (1882), *s.* 39—*Civil Procedure Code Amendment Act* (*VI of* 1892), *s.* 4—*Application for execution of decree—Proceedings in the suit—Vakalatnamah.*] Applications for execution of the decree are proceedings in the suit within the meaning of s. 39 of the Civil Procedure Code. A *vakalatnamah* remains in force until all proceedings in the suit are ended. SADASHIV GANPATRAO *v.* VITHALDAS NANCHAND.

[20 Bom. 198

3.—*Civil Procedure Code* (1882), *s.* 39—*Delegation of authority by duly appointed pleader—Ex-parte decree—Application for new trial.*] The applicant (defendant No. 2) was one of two defendants in a suit in the Court of Small Causes in Bombay. He and his co-defendant (defendant No. 1) appointed separate pleaders (*K* and *W*) to conduct their case. On the day of hearing the applicant was unavoidably unable to be present, and his pleader (*K*) being also engaged elsewhere requested *W*, the pleader of the other defendant in the suit, to hold his brief and to conduct the case for both defendants. *W* did so. A decree was passed against both the defendants. The applicant subsequently applied to the Full Court under s. 37 of the Presidency Small Causes Court Act (XV of 1882) for a new trial on the ground that he had not been represented at the hearing, and that the decree had been passed against him *ex parte*. The Full Court refused the application, holding that the applicant had been represented by a pleader, and that the decree against him was not *ex parte*. The appellant then applied to the High Court in its extraordinary jurisdiction:—*Held*, discharging the order of the Full Court, that the decree against the applicant was an *ex-parte* decree. *K*, who was the applicant's duly appointed pleader, could not delegate his authority to *W*, and as the applicant was not himself present, the decree was *ex parte*. *W* was not the duly appointed pleader of the applicant, and could not therefore represent him at the hearing: see s. 39 of the Civil Procedure Code (Act XIV of 1882). The High Court sent back the case to the Small Causes Court to deal with the application for a new trial on its merits. SHIVDAYAL RAMCHARAN *v.* KHETU GANGU.

[20 Bom. 293

4.—*Criminal Procedure Code* (1882), *s.* 340—"*Accused*," *Meaning of*—*Right to be heard by leader.*] Under the provisions of s. 340 of the

PLEADER—*continued.*

(1) APPOINTMENT AND APPEARANCE—*concluded.*

Criminal Procedure Code, a Sessions Judge is bound to hear the pleader appointed by a person who (though not accused of any offence) is ordered to give security for good behaviour under s. 118 of the Criminal Procedure Code. The word "accused" means a person over whom the Magistrate or other Court is exercising jurisdiction. *Queen-Empress* v. *Mona Puna*, I. L. R. 16 Bom. 661, followed. JHOJA SINGH *v.* QUEEN-EMPRESS.

[23 Calc. 493

(2) AUTHORITY TO BIND CLIENT.

5.—*Opinion expressed by Vakil in argument.*] The opinion expressed by a Vakil in the course of argument adversely to a claim which he undertook to advocate is not binding on his client. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR.

[18 Mad. 73

(3) REMUNERATION.

6.—*Legal Practitioners Act* (*XVIII of* 1879), *ss.* 28 *and* 29—*Suit on promissory note given for past professional services rendered under oral agreements—Guardian and ward—Services necessary or beneficial to minor.*] A guardian executed a promissory note in favour of a Vakil (the plaintiff) as remuneration for his past professional service rendered under oral agreements with him:—*Held*, that a suit upon the note was barred by ss. 28 and 29 of Act XVIII of 1879, and that, as there was no such necessity for the proceeding in question as to render the contract binding on the minors, no suit would lie against them. SUNDARARAJA AYYANGAR *v.* PATTANATHUSAMI TEVAR.

[17 Mad. 306

7.—*Fee of pleader how calculated—Claim for maintenance by defendants in suit for partition—Fee of pleader of such defendants—Bombay Regulation II of* 1827, *s.* 52, *Appendix L—Act I of* 1846, *s.* 7—*Costs.*] The plaintiff sued for partition and made two widows, who were entitled to maintenance out of the estate, co-defendants in the suit. The plaintiff and the male defendants compromised the suit, and a decree was passed in terms of the compromise. By the compromise the costs of the widows were to be paid by the estate, and in estimating the costs, the lower Court allowed each widow a separate set of costs and calculated the amount to be paid to each as pleader's fees on the value placed on his claim by the plaintiff. On appeal to the High Court:—*Held*, that the pleaders of the widows were not employed in prosecuting or defending an original suit of the value of the plaintiff's claim so as to be entitled under s. 52, Bombay Regulation II of 1827, to a percentage on the amount that the plaintiff sued for according to the rates specified in Appendix L. The widows were in reality prosecuting a suit for their maintenance, and their pleaders were entitled to a percentage only on the amount claimed by them for maintenance. Case remanded for the amount of the pleaders

PLEADER—*continued.*

(3) REMUNERATION—*concluded.*

fees to be correctly calculated. When a case is decided on the merits, the full percentage is to be paid: in other cases one-fourth only should be paid under s. 7 of Act I of 1846. RAMCHANDRA PARSHARAM *v.* BHAGUBAI.

[21 Bom. 42

8.—*Legal Practitioners Act (XVIII of* 1879), *s.* 28 —*Oral agreement for pleader's remuneration —Criminal proceedings — Quantum meruit.*] A pleader was retained by an accused person to conduct his defence. The accused did not pay the agreed fee, and the plaintiff thereupon declined to conduct his defence. The defendant, who was one of the accused, then undertook orally to pay the fee, but failed to do so after the plaintiff had conducted the defence of both accused persons. The plaintiff now sued the defendant to recover the agreed amount:—*Held*, that under Legal Practitioners Act, s. 28, the plaintiff was not entitled to recover on the contract, but that he was entitled to recover reasonable remuneration for the services rendered by him. NARASIMMA CHARIAR *v.* SINNAVAN.

[20 Mad. 365

(4) REMOVAL, SUSPENSION AND DISMISSAL.

9.—*Letters Patent, High Court, N.-W. P., cl.* 8—"*Reasonable cause*"—*Offer to give a gratification, contrary to s.* 36 *of the Legal Practitioners Act (XVIII of* 1879)— *Abetment — Penal Code (Act XLV of* 1860), *ss.* 41 *and* 116.] A Vakil of the High Court signed and sent a letter to another Vakil of that Court, who practised in District Courts subordinate thereto. The purport of this, which was one of several printed forms prepared for circulation to Vakils practising in districts, was to the effect that the Vakil, to whom it was addressed, "could easily send his clients' cases, both civil and criminal," to the writer, who would conduct them in that Court. And—"as a remuneration"—the fees paid by the clients would be shared between the writer and the Vakil who had sent the cases. The Judicial Committee concurred substantially in the conclusions of the High Court that this was an incitement within s. 116 (abetment) of the Penal Code to commit an offence made penal by s. 36 (which was a special law within s. 41 of that Code) of Act XVIII of 1879, the Legal Practitioners Act. This misconduct had been aggravated by the appellant having denied to the Vakils Association, North-Western Provinces, and caused evidence to be called to negative, his having signed the printed letter, which he had signed. Thus, there was "reasonable cause" within s. 8 of the Letters Patent of March 17th, 1866, establishing the High Court, for his suspension, to which, for four years from the date of that Court's order, his punishment was reduced. IN THE MATTET OF PARBATI CHARAN CHATTERJI.

[17 All. 498
[L. R. 22 I. A. 193

10.—*Letters Patent, High Court, N.-W. P., cl.* 8—*Conviction of Vakil for criminal offence—Vakil*

PLEADER—*continued.*

(4) REMOVAL, SUSPENSION AND DISMISSAL —*concluded.*

called upon to show cause why he should not be struck off the roll—Argument not allowed to show that conviction was wrong.] A Vakil practising in the High Court was convicted by a Court of Session of the offence punishable under s. 471, of the Penal Code, and the conviction was affirmed by the High Court on appeal. The Vakil was subsequently called upon to show cause why he should not in consequence of such conviction be struck off the roll of Vakils of the Court. On appearance in answer to this rule, it was *held* that the Vakil was not entitled to question the propriety in law or in fact of the conviction, but that it was open to him to show, if he could, that his conduct in the matter in respect of which he had been convicted was not such as to render him an unfit person to be retained on the roll of Vakils of the Court. IN THE MATTER OF RAJENDRO NATH MUKERJI.

[18 All. 174

PLEADERS AND MOOKTEARS ACT (XX OF 1865).

See PLEADER—APPOINTMENT AND APPEARANCE.

[16 All. 240

PLEADINGS.

See RAILWAYS ACT, S. 77.

[24 Calc. 306

——, Admission in.

See LIMITATION ACT, S. 19 — ACKNOWLEDGMENT OF DEBTS.

[18 All. 384
[23 Calc. 374

——, Defamatory statement in.

See LIBEL.

[23 Calc. 867

——, Reference to.

See DECREE—CONSTRUCTION OF DECREE —GENERAL CASES.

[18 All. 344

—Object of pleadings—Issue not in terms fixed, but afterwards raised—Appointment of the religious superior of a Mahomedan institution—Custom as to such appointment.] The object of any system of pleading is that each side may be made fully aware of the questions that are about to be argued, in order that each may bring forward evidence appropriate to the issues. The claim here made was that the last preceding *sajjadanashin*, acting according to the custom of the institution of which he was the religious superior and manager, had appointed the plaintiff to succeed him on his decease. The finding of the first Court that he had this power by the custom was affirmed on this appeal. As

PLEADINGS—*concluded.*

to the fact of the appointment, it was not apparent at what stage of the suit the question had first been raised, whether the deceased had been of sound and disposing mind at the time of making it. The first Court found that he had been of sound mind at the time; but the Chief Court on appeal reversed this finding, and added that he had been, in their opinion, unduly influenced. As these questions, though not formally stated in the issues, had been sufficiently open upon the proceedings to give to each Court a right to form a judgment upon them, the Judical Committee decided which was correct; and affirmed the finding of the first Court as to the soundness of mind of the deceased. SAYAD MUHAMMAD *v.* FATTEH MUHAMMAD.

[22 Calc. 324
[L. R. 22 I. A. 4

PLEDGE.

See STAMP ACT, SCH. I, ART. 44.

[21 Calc. 224

—— of moveable property, Suit on.

See LIMITATION ACT, ART. 57.

[22 Calc. 21
[17 All. 284

POLICE.

——, Investigation by.

See WITNESS—CRIMINAL CASES — SUMMONING WITNESSES.

[24 Calc. 320

——, Property found by.

See CRIMINAL PROCEDURE CODE, S. 517.

[24 Calc. 499

——, Resistance to.

See BENGAL EXCISE ACT, S. 4.

[24 Calc. 324

See PENAL CODE, S. 186.

[24 Calc. 320

See PENAL CODE, S. 332.

[18 All. 246

POLICE ACT (XIII OF 1856).

——, s. 35.

See STOLEN PROPERTY, OFFENCES RELATING TO.

[20 Bom. 348

POLICE CONSTABLE.

See MALICIOUS PROSECUTION.

[18 Mad. 136

POLICE CONSTABLE—*concluded.*

——, Threat to obtain dismissal of.

See CRIMINAL INTIMIDATION.

[20 Bom. 794

POLICE DIARIES.

See ACCUSED PERSON, RIGHT OF.

[19 Mad. 14
[19 All. 390
[20 Mad. 189

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[16 All. 207
[19 All. 390

POLICE INQUIRY.

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS.

[20 Mad. 387

POLICE-OFFICER.

——, Assault on.

See PENAL CODE, S. 332.

[18 All. 246

——, Charge made to, at Police-station.

See FALSE CHARGE.

[20 Mad. 79

——, Duty of.

See ABETMENT.

[20 Bom. 394

——, Liability of.

See OPIUM ACT, S. 9.

[24 Calc. 691

See WRONGFUL CONFINEMENT.

[19 Bom. 72

——, Power of.

See BOMBAY DISTRICT POLICE ACT, S. 48.

[19 Bom. 737

See MADRAS POLICE ACT, S. 21.

[17 Mad 37

——, Statement to.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[22 Calc. 50

See CONFESSION — CONFESSIONS TO POLICE-OFFICERS.

[19 Bom. 363
[20 Bom. 795

POLICE-OFFICER—*concluded.*

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[21 Calc. 392
[16 All. 207
[17 All. 57
[19 All. 390

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[18 Bom. 377

POLICE PATEL.

See ILLEGAL GRATIFICATION.

[21 Bom. 517

——, Duties of.

See BOMBAY VILLAGE POLICE ACT.

[19 Bom. 612

POLICE REPORTS.

See ACCUSED PERSON, RIGHT OF.

[20 Mad. 189

See EVIDENCE ACT, S. 74.

[20 Mad. 189

POLICY OF INSURANCE.

See INSOLVENCY—AFTER-ACQUIRED PROPERTY.

[18 Mad. 24

See INSURANCE—LIFE INSURANCE.

[20 Bom. 99
[23 Calc. 320

See STAMP ACT, S. 3, CL. 15.

[19 Bom. 130

POLITICAL AGENT, CERTIFICATE OF.

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.

[19 Bom. 145

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[17 Mad. 14

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[19 All. 109

PORTS ACT (X OF 1889).

1.—s. 6, cl. (k)—*Rules made by Local Government—Boats plying and not plying for hire—Ultra vires.*] It is only with regard to boats plying for hire that s. 6 of Act X of 1889 gives the Local Government authority to make rules.

PORTS ACT (X OF 1889)—*concluded.*

Rules purporting to make it obligatory on boat owners to ply for hire are *ultra vires*. QUEEN-EMPRESS *v.* THOMMAYYA CHETTI.

[17 Mad. 397

2.—ss. 6 and 8.—*Order purporting to be under the Act by Conservator of Port—Public body authorised by Legislature to make rules, Powers of—Delegation of power—Rules made by Local Government.*] The Conservator of the Port of Negapatam, purporting to act under the Indian Ports Act, s. 8, made and published an order that when a certain flag was flying at the signal station, all boats returning from the sea should cast anchor and not come inside the river. The Local Government had made a rule with reference to s. 6 (*k*) of the above Act requiring boat owners to "carry out at all times all orders issued by the Conservator in connection with the plying of their boats, and which are not inconsistent with the regulation issued by Government." A charge was brought against two persons, being the owners and tindals of licensed cargo boats, for neglecting to obey the aforesaid order, and they were convicted, under the Indian Ports Act, s. 8 (2), by the Conservator in his capacity as special first-class Magistrate:—*Held*, that the order was *ultra vires*, and the conviction was accordingly illegal. *Per curiam*—A public body, whether the Executive Government or a corporation, being entrusted by the Legislature with the duty of making rules, cannot relieve itself of the responsibility and depute other agencies to discharge the duty. QUEEN-EMPRESS *v.* MARIAN CHETTI.

[17 Mad. 118

POSSESSION.

Col.
1. Evidence of Title ... 973
2. Adverse Possession ... 974

See CASES UNDER DECREE—FORM OF DECREE—POSSESSION.

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION.

[20 Bom. 351

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.

[19 Mad. 165

——Adverse.

See LANDLORD AND TENANT—EJECTMENT—GENERALLY.

[19 Bom. 138

See LIMITATION ACT, ART. 127.

[18 Bom. 197

See LIMITATION ACT, ART. 137.

[20 Bom. 557

See CASES UNDER LIMITATION ACT, ART. 141.

See CASES UNDER LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

POSSESSION—*continued.*

See LIMITATION ACT, ART. 149.
[19 Mad. 154

See LIMITATION ACT, ART. 180.
[22 Calc. 921
[24 Calc. 244

See MAHOMEDAN LAW—GIFT.
[18 All. 1

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.
[22 Calc. 244

See SERVICE TENURE.
[18 Bom. 22

——, **Constructive or symbolical.**

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
[18 Mad. 405

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[18 Bom. 37
[19 Bom. 620
[24 Calc. 715
[19 All. 499

See MADRAS RENT RECOVERY ACT, S. 12.
[18 Mad. 266

See MAMLATDAR, JURISDICTION OF.
[20 Bom. 260, 264 note

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
[24 Calc. 256

——, **Delivery of.**

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[18 All. 36

See HINDU LAW—GIFT—REQUISITES OF GIFT.
[18 Bom. 688
[16 All. 185

See REGISTRATION ACT, S. 50.
[18 Bom. 332
[20 Bom. 158

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[17 Mad. 146
[22 Calc. 179

POSSESSION—*continued.*

——, **Disturbance of.**

See LANDLORD AND TENANT—OBLIGATION OF LANDLORD TO GIVE, AND MAINTAIN TENANT IN, POSSESSION.
[24 Calc. 296

See MAMLATDARS COURTS ACT, S. 4.
[18 Bom. 46

——, **Nature of.**

See MAMLATDAR, JURISDICTION OF.
[18 Bom. 449
[19 Bom. 289
[20 Bom. 260, 264 note

See SPECIFIC RELIEF ACT, S. 9.
[22 Calc. 563

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.
[18 Bom. 449

——, **Obstruction of.**

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.
[18 Bom. 37

See PRACTICE—CIVIL CASES—SALE BY RECEIVER.
[21 Calc. 479

See CASES UNDER RESISTANCE, OR OBSTRUCTION, TO EXECUTION OF DECREE.

——, **Suit for.**

See KHOTI SETTLEMENT ACT.
[20 Bom. 78

See LIMITATION ACT, ART. 14.
[24 Calc. 149

See LIMITATION ACT, ART. 118.
[17 All. 167
[22 Calc. 609
[L. R. 22 I. A. 51
[20 Mad. 40

See LIMITATION ACT, ART. 136.
[23 Calc. 49

See MAMLATDAR, JURISDICTION OF.
[20 Bom. 351, 491

——, **Suit for, and for mesne profits.**

See COURT-FEES ACT, S. 11,
[24 Calc. 173

See COURT-FEES ACT, S. 17.
[16 All. 401

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.
[19 All. 155
[L. R. 24 I. A. 22

POSSESSION—*continued.*

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[17 All. 533

See RES JUDICATA—RELIEF NOT GRANTED.

[21 Calc. 252

——, Suit for, and for partition.

See VALUATION OF SUIT—SUITS.

[18 Bom. 209

——, Transfer of.

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

[17 Mad. 232

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[20 Mad. 354

——, Wrongful.

See RIOTING.

[21 Calc. 392

(1) EVIDENCE OF TITLE.

1.—*Suit for damages for value of fruit taken from garden—Right of suit.*] A suit for damages for the value of fruit crops taken away by the defendant from a garden alleged to be in the plaintiff's possession can be sustained on the finding that the plaintiff was in possession up to the date of the institution of the suit: it is not necessary for him to prove his title to the land, unless the defendant shows a better title. In this case, there being no sufficient findings of the plaintiff's possession to the date of suit, nor that the defendant had failed to show the better title, the suit was remanded for such findings. LEP SINGH KHASIA *v.* NIMAR KHASIA.

[21 Calc. 244

2.—*Title by possession—Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Onus of proof.*] The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew, and of which, after his death in 1878, she had assumed the management. In 1881, she brought a possessory suit against the first defendant in the Mamlatdar's Court, which suit was dismissed in January, 1885, the Mamlatdar holding that she had not been in possession. In a civil suit, however, which (pending the proceedings in the Mamlatdar's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him. In 1887, the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mamlatdar's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December, 1887. In 1890, the plaintiff filed this

POSSESSION—*continued.*

(1) EVIDENCE OF TITLE—*concluded.*

suit to recover possession and for mesne profits since 1887. The defendant pleaded that the plaintiff had no title to the land, and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mamlatdar's order in 1885 dismissing her possessory suit:—*Held*, that the plaintiff's possession prior to 1887, confirmed as it was by the decree of the Civil Court in 1885, and by the finding of the lower Court of Appeal in the present case, must prevail against the defendant, who claimed through plaintiff's farm servant only, and whose possession commenced with the disturbance which compelled the plaintiff to bring the suit. Possession is *primâ facie* evidence of title, and is primarily exclusive, and it is for him who impugns this exclusive title to show that the possession originated in a way not to affect his own right. KRISHNACHARYA *v.* LINGAWA.

[20 Bom. 270

3.—*Suit by person in possession for declaration of title—Burden of proof—Failure of plaintiff or defendant to prove title—Effect of plaintiff's possession.*] The plaintiff, who was in possession of certain land, sued for a declaration that the defendant had no title to it, and that it belonged to him. The plaint also contained a prayer for general relief. At the trial both plaintiff and defendant failed to prove any title to the land, but the plaintiff proved that he had been for ten years in possession and had built a shed on it:—*Held*, that no declaration of the plaintiff's title could be made; but *held*, on the authority of *Ismail Ariff* v. *Mahomed Ghouse*, I. L. R. 20 Calc. 834; L. R. 20 I. A. 99, that the plaintiff was lawfully entitled to the land and to the shed thereon. GANGARAM CHIMNA PATEL *v.* SECRETARY OF STATE FOR INDIA.

[20 Bom. 798

(2) ADVERSE POSSESSION.

4.—*Landlord and tenant—Continued possession by heirs of tenant—Non-payment of rent, Effect of, after expiration of lease—Permissive possession—Limitation.*] In 1840, the land in dispute was leased to *R* for life. *R* died in or about 1871, and after *R's* death, his heirs (the defendants) continued in possession without obtaining a fresh lease or paying any rent to the landlord in 1888; the landlord sued to eject the defendants. The defence was that the suit was barred by limitation:—*Held*, that the suit was not barred. After *R's* death the defendants, though not in possession as tenants, were not trespassers. Their possession was permissive, and not adverse until they expressly set up a title of ownership in the property. KRISHNAJI RAMCHANDRA *v.* ANTAJI PANDURANG.

[18 Bom. 256

5.—*Usufructuary mortgage satisfied out of usufruct—One of several co-mortgagees obtaining possession of the whole property—Limitation.*] In the

POSSESSION—*continued.*

(2) ADVERSE POSSESSION—*continued.*

case of a usufructuary mortgage by several co-mortgagors when such mortgage is satisfied out of the usufruct, each co-mortgagor is not entitled to recover possession of more than his share of the mortgaged property. Consequently where in such a case one of several co-mortgagors gets possession of the whole of the mortgaged property, he does not occupy the position of a mortgagee to his co-mortgagors, but his possession is adverse to them. *Fakir Bukhsh* v. *Sadat Ali*, I. L. R. 7 All. 376, followed. GOBARDHAN *v.* SUJAN.

[16 All. 254

6.—*Decree and execution against father—Subsequent possession by sons—Civil Procedure Code* (1877), *s.* 263—*Limitation.*] One *A* formerly owned the house and land in dispute. He sold it to *G*, who sold it to the plaintiff. *A*, however, continued in occupation of the property. In 1879, the plaintiff sued *A* and *G* for possession and obtained a decree. On the 6th April, 1880, in execution of the decree, he was put in formal possession by the Court under s. 263 of the Civil Procedure Code (Act X of 1877) in the presence of *A*, who made no objection. At the time of these proceedings, *A's* sons (the present defendants) were living with him in the house, and they continued to do so subsequently. *A* died in 1885, and his sons continued in possession of the property and cultivated it. On the 4th April, 1892, the plaintiff brought this suit to eject them. They pleaded that the suit was barred by limitation, contending that the execution-proceedings in 1880 did not bind them, as they were not parties to that suit:—*Held*, that as they present suit would not have been barred against *A* had he survived, it was not barred against the defendants, whose rights were derived from him. The defendants living with their father had no independent juridical possession of the premises. The father *A* was the only person in possession. The possession which the plaintiff obtained through the Court from *A* in 1880 operated as well against the defendants (*A's* sons) as against *A* himself. PANDHARINATH *v.* MAHABUBKAN.

[21 Bom. 98

7.—*Madras Rent Recovery Act (Madras Act VIII of* 1865), *Effect of—Omission by inamdar to obtain registration of title under Madras Regulation XXVI of* 1802.] An *inamdar* had not obtained registration of his title under the registered landlord, and could not therefore sue to enforce acceptance of *pottahs*, and had not collected rent from the tenants for more than 12 years:—*Held*, that the tenants had not by reason of these facts acquired rights against the *inamdar* by adverse possession. SRINIVASARAGAVA AYYANGAR *v.* MUTTUSAMI PADAYACHI.

[20 Mad. 6

8.—*Adverse possession of a partial interest (e.g., a tenant's) in land—Title by adverse possession asserted by a plaintiff against the true owner as well as alleged as a defence—Landlord and tenant—Limitation Act (XV of* 1877), *s.* 28, *and Art.* 144.] Adverse possession for more than twelve years by one claiming to hold land as its full owner not only extinguishes the title of the true owner to the land so held, and debars him from suing for its recovery, but creates a title by negation in the occupant which he can actively assert, if he loses possession, even against the true owner. A partial interest in land may be lost by adverse possession as well as the whole interest, and the right to such partial interest may be asserted by suit. So, where a landlord seeks to recover from his tenant possession of land in his tenant's occupancy, and the latter alleging a perpetual tenancy successfully resists on that ground the landlord's attempt to dispossess him, the tenant may, after the statutory period has expired, plead limitation in bar of a subsequent suit in ejectment by the landlord. A landlord allowing the tenant to assert the validity of an invalid lease for the statutory period of more than twelve years may be debarred from subsequently questioning the right of the tenant to hold under its terms. BUDESAB *v.* HANMANTA.

[21 Bom. 509

POSSESSION—*concluded.*

(2) ADVERSE POSSESSION—*concluded.*

POSSESSION, ORDER OF CRIMINAL COURT AS TO.

		Col.
1.	Cases which Magistrate may Decide as to Possession	... 976
2.	Likelihood of Breach of Peace	... 977
3.	Parties to Proceedings	... 977
4.	Evidence, Mode of taking, Witnesses, &c.	... 979
5.	Decision of Magistrate as to Possession	... 979
6.	Transfer or Withdrawal of Proceedings	... 980
7.	Disputes as to Right of Way, Water, &c.	... 981
8.	Costs	... 982

See LIMITATION ACT, ART. 47.

[23 Calc. 731

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[18 Mad. 402

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[18 Mad. 402

(1) CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION.

1.—*Criminal Procedure Code* (1882), *s.* 145—*Dispute as to the right to realise rent—Share in joint undivided property — Tangible immoveable property.*] A dispute as to the right to realise rent in respect, not of the whole sixteen annas, but only of an undivided share of any tract of land, is not a dispute concerning tangible immoveable property within the meaning of s. 145 of the Criminal Procedure Code. *Ramrunginee Dossee* v. *Gooroodoss Roy*, 18 W. R. Cr. 36; and

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

(1) CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION—*concluded.*

Beni Narain v. *Acharj Nath*, I. L. R. 5 All. 607, approved of. *Pramatha Bhoosun Deb Roy* v. *Durga Churn Bhuttacharjee*, I. L. R. 11 Calc. 413; *Sarbananda Basu Mazumdar* v. *Pran Sunkar Roy Chowdhry*, I. L. R. 15 Calc. 527; and *Abhayessuri Debi* v. *Shidhessuri Debi*, I. L. R. 16 Calc. 513, distinguished. SURB NARAIN SINGH *v.* BIEJ MOHUN THAKUR.

[23 Calc. 80

(2) LIKELIHOOD OF BREACH OF PEACE.

2.—*Criminal Procedure Code* (1882), *s.* 145—*Authority of District Magistrate—Sub-divisional Magistrate.*] In a case where a District Magistrate made an order stating that, in his opinion, it was the duty of the Sub-divisional Magistrate to institute proceedings under s. 145 of the Criminal Procedure Code:—*Held*, that the District Magistrate had no authority in law to direct the Sub-divisional Magistrate to institute such proceedings. A Magistrate proceeding under this section must himself be satisfied by a Police report or other information that there is a likelihood of a breach of the peace, and he has a discretion as to whether to institute proceedings or not. *Queen-Empress* v. *Govind Chandra Das*, I. L. R. 20 Calc. 520, followed. KAILASH CHANDRA PAL *v.* KUNJA BEHARI PODDAR.

[24 Calc. 391

(3) PARTIES TO PROCEEDINGS.

3.—*Criminal Procedure Code* (1882), *s.* 145—*Parties concerned in proceedings.*] The words "parties concerned" in s. 145 of the Criminal Procedure Code do not necessarily mean only the persons who are disputing, but include also persons who are interested in, or claiming a right to, the property in dispute. RAM CHANDRA DAS *v.* MONOHUR ROY.

[21 Calc. 29

4.—*Criminal Procedure Code* (1882), *s.* 145—"*Parties concerned in dispute*"—*Death of one of original parties—Substitution of party without fresh proceeding under s.* 145—*Possession at time of institution of proceeding or at time of final order—Criminal Procedure Code, s.* 537.] In a proceeding under s. 145 of the Code of Criminal Procedure recorded on the 27th April, 1893, *A* and *B* were respectively made first and second parties, and were ordered to put in statements of their claims to the land in dispute, which they accordingly did. *B* died on the 24th May, 1893. In his statement filed on the 31st May, *A* disclaimed any interest in the land, but stated that his mother, *D K* (who had been a party concerned in the dispute which led to the original proceeding), was the owner and in possession of it. On the 1st June, *B S* applied to be substituted as a party in place of his father *B*. *D K* and *B S* were made parties without any fresh proceeding under s. 145 of the Code. The case was heard on the 27th June and the 7th July, and, on the 17th July, the

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

(3) PARTIES TO PROCEEDINGS—*continued.*

Magistrate found as regards the possession in favour of *D K*:—*Held*, by PETHERAM, C. J., and TREVELYAN, J. (RAMPINI, J., dissenting), that since the possession to be inquired into was the possession at the time of the initiation of the proceedings, the words "parties concerned in the dispute" meant parties concerned at that time: there was no power in such a proceeding to introduce parties who were not concerned in the original dispute. No order could therefore be made against *B S*, and the proceeding were bad as against him. *Per* RAMPINI J.—The preliminary proceeding under s. 145 of the Code may, and in many cases must, partake of the character of a general citation to all the parties concerned in the dispute to appear, and it is not neccessary for the Magistrate to confine his final order as to possession to the parties whom he may have named in the preliminary proceeding. The Magistrate had power to substitute the name of *B S* for that of his father without commencing the proceedings *de novo*. The alteration in s. 145 of Act X of 1882, the present Criminal Procedure Code, of the language of s. 530 of the old Code, Act X of 1872, implies that the Magistrate is to decide on the possession, not at the time of the initiation of the proceedings, but at the time of recording the evidence. If there was any error in the proceedings, it was one cured by s. 537 of the Code. BECHU SHEIKH *v.* DEB KUMARI DASI.

[21 Calc. 404

5.—*Criminal Procedure Code* (1882), *s.* 145—*Manager of company—Right to notice.*] Where proceedings under s. 145 of the Code of Criminal Procedure were instituted by a Magistrate regarding a dispute as to the right to dig for coal in a certain *mouzah* which was claimed by a company to the exclusion of those in possession of the surface rights of a portion of the *mouzah*, and the Magistrate made the manager of the company only a party to the proceedings, and not the company itself, and an order was made under the section in favour of the manager:—*Held*, that the order was bad and must be set aside, as the parties interested were not properly before the Court. The manager had no interest, except as such, or possession except as representing the company, and such possession is not the kind of possession contemplated by the section. BEHARY LALL TRIGUNAIT *v.* DARBY.

[21 Calc. 915

NEWAZ ALI *v.* RAM BALLABH CHAKRAVARTI.

[21 Calc. 916 note

See BATHOO LAL *v.* DOMI LAL.

[21 Calc. 727

DUKHI MULLAH *v.* HALWAY.

[23 Calc. 55

6.—*Criminal Procedure Code* (1882), *s.* 145—*Parties bound by order.*] Orders passed under

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

(3) PARTIES TO PROCEEDINGS—*concluded.*

the Criminal Procedure Code, s. 145, are binding only on the actual parties to the cases in which they are made. QUEEN-EMPRESS *v.* KUPPAYYAR.

[18 Mad. 51

7.—*Criminal Procedure Code* (1882), *s.* 145—*Initial proceedings—Parties concerned—Adding parties during the course of the proceeding.*] Before initiating proceedings under s. 145 of the Criminal Proceedure Code, it is the duty of the Magistrate not only to be satisfied that a dispute likely to cause a breach of the peace exists, but also to ascertain, as far as possible, who are concerned in the dispute. The Magistrate has no power to add parties during the course of the proceeding unless in the initial proceeding he is satisfied that they are concerned in the dispute. If in the course of the proceedings it appears to the Magistrate that it is absolutely necessary that other parties should be required to attend, the only course open to him is to initiate a new proceeding. *Ram Chandra Das* v. *Monohur Roy*, I. L. R. 21 Calc. 29, discussed. PROTAP NARAIN SINGH *v.* RAJENDRA NARAIN SINGH.

[24 Calc. 55

(4) EVIDENCE, MODE OF TAKING, WITNESSES, &c.

8.—*Criminal Procedure Code* (1882), *s.* 145—*Issue of summons to witnesses—Magistrate, Duty of—Process to enforce attendance of witnesses.*] Though in a proceeding under s. 145, the evidence is to be recorded as in a summons-case, it is the duty of the Magistrate to issue processes for the attendance of such witnesses as the parties may desire to call, unless he can show good reasons for not doing so. *Hurendro Narain Singh Chowdhry* v. *Bhobani Prea Baruani*, I. L. R. 11 Calc. 762, followed. RAM CHANDRA DAS *v.* MONOHUR ROY.

[21 Calc. 29

(5) DECISION OF MAGISTRATE AS TO POSSESSION.

9.—*Criminal Procedure Code* (1882), *ss.* 145 *and* 146—*Possession, Inquiry as to—Time at which Magistrate is to determine who was in possession—Order passed under s.* 146 *on proceedings taken under s.* 145, *Criminal Procedure Code—Attachment of property.*] In setting aside an order passed by a Magistrate under s. 145 of the Code of Criminal Procedure, the High Court has power itself to pass such order as should have been made by the Magistrate in the case. It is impossible to lay down any hard and fast rule which may be applicable to all cases as to the exact point of time to which an inquiry under s. 145 must be directed, and the time at which possession must be found in one party or the other must be governed by the facts of each particular case. To hold that the Magistrate is precluded from inquiring into anything before the date when he actually commenced his own proceedings might in some cases lead to a person who has been acting in an unwarrantable manner

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

(5) DECISION OF MAGISTRATE AS TO POSSESSION—*concluded.*

misusing the process of the law to enable him to carry out a high-handed and improper scheme, which could never have been the intention of the Legislature. In a proceeding under s. 145 regarding a dispute between two parties concerning certain collieries, it appeared that the first party were certainly in possession of the buildings which contained the office where the business of the collieries was transacted, and where all the cash books and papers of the business were kept, and that the second party had during a period of about fourteen days prior to the commencement of the proceedings succeeded in obtaiuing possession of the pits, wharves, tramways, &c., of the colliery by what the Court considered to be a high-handed and improper scheme, and acting in an unwarrantable manner. The Magistrate, considering himself bound to find who was in actual possession at the date of the commencement of the proceedings by himself, passed an order in favour of the second party:—*Held*, that such order was bad, and that as the second party was undoubtedly not in possession of the whole of the property in dispute, and the effect of it was to place them in possession of the portion that was in the possession of the first party, the proper order to make under such circumstances was one under s. 146 attaching the property. KATRAS JHERRIA COAL CO. *v.* SIBKRISHTA DAW & CO.

[22 Calc. 297

10.—*Criminal Procedure Code* (1882), *ss.* 145 *and* 146—*Possession—Inquiry as to time at which Magistrate is to determine who is in possession—Presumption.*] A Magistrate, in making an order under the Criminal Procedure Code, ss. 145 and 146, must inquire into the question which party was in actual possession at the time of the institution of the proceedings, and not at the time when the order is made. In making this inquiry, the Magistrate may presume that when a vendor sells part of a property, he retains all that he does not sell. AGRA BANK *v.* LEISHMAN.

[18 Mad. 41

(6) TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

11.—*Criminal Procedure Code* (1882), *s.* 145, *and ss.* 192 *and* 528—*Power of a District or Sub-divisional Magistrate to transfer or withdraw cases.*] A proceeding under Chap. XII of the Criminal Procedure Code is an "inquiry" within the meaning of s. 4 of the Code. The general power conferred by ss. 192 and 528 of the Code upon a District or Sub-divisional Magistrate to transfer or withdraw any case for inquiry or trial by any Magistrate, subordinate to him, is not taken away or cut down by anything in s. 145. The words of s. 192 are wide enough to include cases under Chap. XII. SATISH CHANDRA PANDAY *v.* RAJENDRA NARAIN BAGCHI.

[22 Calc. 898

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

(7) DISPUTES AS TO RIGHT OF WAY, WATER, &c.

12.—*Criminal Procedure Code* (1882), *s.* 147 — *Easements — Procedure to be observed by Magistrate when dispute exists regarding an easement — Parties entitled to notice.*] The inquiry contemplated under s. 147 of the Code of Criminal Procedure is a judicial inquiry, and the opinion formed by a Magistrate must be a judicial one based on evidence legally recorded by him in the manner provided by s. 356, and on due notice to the persons who respectively claim or deny the right, the subject of the dispute. Notice to servants of such persons is not enquivalent to notice to them, and in such cases actual notice should be given to all the persons claiming or denying the right and interested in the subject-matter of the inquiry. Magistrates should not institute proceedings under s. 147, unless they are satisfied that a real danger of the evil, for the prevention of which the procedure was devised, does in fact exist. Such enquiries may lead to injustice being done from defective procedure, and a Magistrate would be wise not to use the section in cases where it must involve a long and complicated inquiry and the presence of a large number of people, when the remedy of binding down a few persons to keep the peace is ready to his hand. BATHOO LAL *v.* DOMI LAL.

[21 Calc. 727

13.—*Criminal Procedure Code* (1882), *s.* 147—*Right of fishing—Easements—Profits à prendre—Parties to the inquiry.*] The words "right to do anything in or upon tangible immoveable property" in s. 147 of the Criminal Procedure Code include the right of fishing. The term "easements" includes profits *à prendre;* it has not been used by the Legislature of this country in the restricted sense in which it is used in English law so as to exclude profits *à prendre.* For the purposes of an inquiry contemplated under s. 147 of the Criminal Procedure Code it is sufficient if the persons who claim for themselves the right, though that right is derived from others, are made parties. The proprietors are not necessary parties. *Ram Chandra Das* v. *Monohur Roy*, I. L. R. 21 Calc. 29; and *Bathoo Lal* v. *Domi Lal*, I. L. R. 21 Calc. 727, distinguished. DUKHI MULLAH *v.* HALWAY.

[23 Calc. 55

14.—*Criminal Procedure Code* (1882), *s.* 147—*Dispute concerning right of fishery—Grounds for Magistrate taking proceedings under s.* 147—*Procedure.*] The words "right to do anything in or upon tangible immoveable property" in s. 147 of the Criminal Procedure Code include *julkur* right. A Magistrate is competent to take action under that section in the case of a dispute concerning the exercise of a *julkur* right. *Dukhi Mullah* v. *Halway*, I. L. R. 23 Calc. 55, followed. If the materials upon which the proceedings are based do not disclose the fact that there is an imminent danger of a breach of the peace, then the Magistrate has no jurisdiction to take action under s. 147 of the Criminal Procedure Code. Any evidence that he may take in the course of the trial cannot give him a jurisdiction which he does not otherwise possess. *Queen-Empress* v. *Govind Chandra Das*, I. L. R. 20 Calc. 520. The proper course to be adopted by the Magistrate, when a dispute concerning easements, &c., arises, is to bind down, under s. 107 of the Code, such of the persons as are likely to disturb the peace. *Bathoo Lal* v. *Domi Lal*, I. L. R. 21 Calc. 727, followed. KALI KISSEN TAGORE *v.* ANUND CHUNDER ROY.

[23 Calc. 557

(8) COSTS.

15.—*Criminal Procedure Code, s.* 148—*Order for costs—Assessment of such costs by successor in office—Magistrate, Power of.*] When a Magistrate passed an order for costs under s. 148, Criminal Procedure Code, but did not state what the amount was to be, *held* that his successor in office had no jurisdiction to pass an order assessing such costs. BHOJAL SONAR *v.* NIRBAN SINGH.

[21 Calc. 609

16.—*Criminal Procedure Code* (1882), *s.* 148—*Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs — Application within reasonable time.*] Where a decision has been given in a case under s. 145 of the Criminal Procedure Code, and an order for costs has been made at the same time and by the same Magistrate, there is no objection to the amount of such costs being afterwards assessed by a different Magistrate if an application for that purpose is made to him within a reasonable time. *Bhojal Sonar* v. *Nirban Singh*, I. L. R. 21 Calc. 609, distinguished. GIRIDHAR CHATTERJEE *v.* EBADULLAH NASKAR.

[22 Calc. 384

17.—*Criminal Procedure Code* (1882), *s.* 148—"*Magistrate passing a decision,*" *Meaning of—Order for costs — Magistrate, Power of—Civil Procedure Code* (1882), *s.* 218—*Criminal Procedure Code* (1882), *s.* 439—*Revision.*] The award of costs under s. 148 of the Code of Criminal Procedure is a *quasi* civil proceeding, and should be made by the Magistrate at the time of passing his decision under s. 145, in the same manner as under s. 218 of the Code of Civil Procedure the order for costs of any application should be made when the application is disposed of. Where, however, the decision under s. 145 was passed on the 19th December, 1893, and the application for costs was made on the 21st December, but owing to delay arising from the action of the objectors, the order for costs was not made until the 16th June, 1894, but then by the same Magistrate who passed the order under s. 145:—*Held*, that the order was not void for want of jurisdiction, and, there being no suggestion that it was unjust

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*concluded.*

(8) COSTS—*concluded.*

or improper on the merits, the Court declined to interfere with it in the exercise of their discretionary power of revision under s. 439. BINODA SUNDARI CHOWDHURANI *v.* KALI KRISTO PAL CHOWDHURY.

[22 Calc. 387

18.—*Criminal Procedure Code* (1882), *s.* 148—*Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs.*] When an order to pay costs under s. 148 of the Criminal Procedure Code (Act X of 1882) has been made by the Magistrate who decided the case, another Magistrate has jurisdiction to assess the amount of costs. *Giridhar Chatterjee* v. *Ebadullah Naskar*, I. L. R. 22 Calc. 384, followed; *Bhojal Sonar* v. *Nirban Singh*, I. L. R. 21 Calc. 609, referred to. MAHOMED ERSHAD ALI KHAN CHOUDHRY *v.* SARODA PROSAD SHAHA.

[23 Calc. 37

19.—*Criminal Procedure Code* (1882), *s.* 148—*Order for, and assessment of, costs—Power of Magistrate—Delay—Notice to parties.*] An order for, and the assessment of, costs under s. 148 of the Criminal Procedure Code should be made at the time of passing the decision under s. 145 of the Code in the presence of the parties. Such costs should not be ordered and assessed by the Magistrate after a long interval, and without allowing all the parties affected an opportunity to appear and show cause. QUEEN-EMPRESS *v.* TOMIJUDDI.

[24 Calc. 757

POTTAH.

See CASES UNDER LEASE.

——, Effect of issue of.

See MADRAS RENT RECOVERY ACT, S. 12.

[18 Mad. 266

——, Suit to enforce.

See JURISDICTION OF CIVIL COURT—POTTAHS.

[17 Mad. 1
[18 Mad. 434

—Grant of pottah by Collector—Conditional grant—Effect of reversal of grant—Appeal to Board of Revenue.] The grant of a *pottah* by a Collector is conditional on the result of an appeal against such grant to the Board of Revenue. TIRUMALASWAMI AYYANGAR *v.* TIRUMALAI GOUNDAN.

[19 Mad. 324

POUNDAGE.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[20 Mad. 158

POUNDAGE-FEE, APPLICATION TO RECEIVE.

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[22 Calc. 827
[23 Calc. 196

POVERTY.

See SECURITY FOR COSTS—APPEALS.

[21 Calc. 526

POWER OF ATTORNEY.

See PRACTICE—CIVIL CASES — LETTERS OF ADMINISTRATION.

[22 Calc. 491

—Stamp—Operation of power confined to British India—Stamp Act (I of 1879), s. 5.] It is not necessary for the Courts in India to consider whether a power-of-attorney issued in England, but which is intended to operate in British India, complies with the fiscal requirements of the Stamp laws in England. It is sufficient if such power-of-attorney is stamped according to the Stamp laws of British India. *Bristow* v. *Sequeville*, 5 Ex. 275; and *James* v. *Catherwood*, 3 D & R. 190, followed; *Clegg* v. *Levy*, 3 Camp. 166, not followed. *Semble:* If such a power-of-attorney was intended to operate in England as well as in British India, it would not be invalid, so far as it was intended to operate in British India, because the requirements of the Stamp laws in England had not been fulfilled. It would be sufficient if it complied with the requirements of the Indian law. IN THE GOODS OF MCADAM.

[23 Calc. 187

POWER OF SALE.

See MORTGAGE — CONSTRUCTION OF MORTGAGES.

[20 Bom. 296

See MORTGAGE—POWER OF SALE.

[21 Bom. 267

See STAMP ACT, SCH. I, ART. 44.

[21 Calc. 241

PRACTICE.

		Col.
1.	Civil Cases	... 986
	(*a*) Admiralty Court	... 986
	(*b*) Appeal	... 987
	(*c*) Commission	... 987
	(*d*) Letters of Administration	... 987
	(*e*) Party attaining Majority	... 988
	(*f*) Reference to High Court	... 988
	(*g*) Report of Registrar	... 988
	(*h*) Sale by Receiver	... 989
	(*i*) Sale by Registrar	... 989
	(*j*) Stay of Proceedings	... 989
2.	Criminal Cases	... 990
	(*a*) Affidavit	... 990
	(*b*) Approvers	... 990
	(*c*) Revision	... 990

PRACTICE—*continued.*

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

[21 Calc. 476

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

[19 Bom. 10

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[18 Bom. 110

See ATTORNEY.

[23 Calc. 576

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 42.

[19 Bom. 212

See CIVIL PROCEDURE CODE, s. 100.

[18 Bom. 59

See COMPANY—WINDING-UP—LIABILITY OF OFFICERS.

[19 Bom. 88

See COMPENSATION—CIVIL CASES.

[18 Bom. 717

See CONTEMPT OF COURT—GENERAL CASES.

[19 Bom. 152

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[21 Calc. 85

See COSTS—TAXATION OF COSTS.

[24 Calc. 891

See DECREE—FORM OF DECREE—MORTGAGE.

[22 Calc. 100

See DEPOSIT OF TITLE-DEEDS.

[24 Calc. 348

See DIVORCE ACT, s. 35.

[19 Bom. 293

[23 Calc. 913, 916 note

See EXECUTION OF DECREE—PROCEEDINGS IN EXECUTION.

[19 Bom. 544

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[20 Bom. 403

See INSPECTION OF DOCUMENTS.

[18 Bom. 368

[22 Calc. 105, 891

[19 Bom. 350

See INSPECTION OF PROPERTY.

[24 Calc. 117

PRACTICE—*continued.*

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[24 Calc. 766

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[19 All. 458

See RAILWAYS ACT, s. 77.

[24 Calc. 306

See RECEIVER.

[19 Mad. 120

See RIGHT OF SUIT — CONTRACTS AND AGREEMENTS.

[17 Mad. 262

See SECURITY FOR COSTS—APPEALS.

[18 All. 101

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE.

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE.

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[18 Bom. 110

See SUMMONS.

[21 Bom. 205

See SUMMONS, SERVICE OF.

[22 Calc. 889

[21 Bom. 223

See TRANSFER OF CIVIL CASE.

[24 Calc. 183

See WRITTEN STATEMENT.

[22 Calc. 268

(1) CIVIL CASES.

(*a*) ADMIRALTY COURT.

1.—*Consolidation of salvage claims — Civil Procedure Code* (1882)—*Rules and Regulations under Statute 2 and 3, Will. IV, cap. 51—Procedure.*] On an application by the impugnant for the consolidation of three separate salvage claims made by three different promovents for salvage services rendered by them:—*Held* (following the more recent English practice), that the claims should not be consolidated against the will of the promovents, but should be heard one after the other successively, subject, however, to one set only of costs being allowed to them in the event of the Court finding at the hearing that the application for consolidation was resisted without sufficient grounds. In such a case (as there is no procedure for such an application prescribed by the Rules and Regulations made in pursuance of 2 and 3 Will. IV, cap. 51, nor any procedure for consolidation in the Civil Procedure Code), the practice of the Court of Admiralty in England ought to be followed so

PRACTICE—*continued.*

(1) CIVIL CASES—*continued.*

(*a*) ADMIRALTY COURT—*concluded.*

far as such practice can be applied to this country by analogy. IN THE MATTER OF THE BRITISH SAILING SHIP "FALLS OF ETTRICK;" THE "CHUSAN" *v.* "FALLS OF ETTRICK."

[22 Calc. 511

(*b*) APPEAL.

2.—*Appeal between co-defendants—Right of appeal.*] Where a Subordinate Judge dealt with a case at the hearing as raising not only a question between the plaintiff and defendants, but also as between the defendants:—*Held*, that one of the defendants could appeal against the decree as between himself and the other defendants. *Gudadhar Banerjee* v. *Mun Mohinee Dossea*, 7 Calc. W. R. 366; and *Atma Ram* v. *Balkishen*, I. L. R. 5 All. 266, distinguished. SOIRU PADMANABH RANGAPPA *v.* NARAYANRAO BIN VITHALRAO.

[18 Bom. 520

3.—*Necessity for copy of decree appealed against accompanying a memorandum of appeal—Civil Procedure Code* (1882), *s.* 541.] A memorandum of appeal is not a good memorandum of appeal in law unless it is accompanied by a copy of the decree appealed against. *Gulab Devi* v. *Sankar Lal*, Weekly Notes, All. (1892) 47, followed. CHAMELA KUAR *v.* AMIR KHAN.

[16 All. 77

(*c*) COMMISSION.

4.—*Commission to examine witnesses—Non-attendance of witnesses—Mode of enforcing attendance—Code of Civil Procedure* (1882), *ss.* 399 *and* 400, *and Sch. IV, No.* 156.] On an application to the High Court to authorise a Commissioner to issue process for the purpose of compelling the attendance of witnesses before him:—*Held*, that the Commissioner should return the Commission to the High Court. The High Court may then send the commission to a Civil Court, within the local limits of whose jurisdiction the witnesses to be examined reside. MAHOMED ALI *v.* WAZID ALI.

[23 Calc. 404

(*d*) LETTERS OF ADMINISTRATION.

5.—*Application for letters of administration by constituted attorney—Power-of-attorney executed in Glasgow—Verification—Declaration as to execution of power.*] The Chief Magistrate of the city of Glasgow being a person lawfully authorised to administer oaths, a declaration as to the execution of a power-of-attorney taken before him and authenticated by his certificate and the common seal of the city of Glasgow, and by a notarial certificate, is sufficient proof of the execution of the power. IN THE GOODS OF HENDERSON.

[22 Calc. 491

PRACTICE—*continued.*

(1) CIVIL CASES—*continued.*

(*e*) PARTY ATTAINING MAJORITY.

6.—*Suit instituted on behalf of minor by next friend—Application for execution of decree by plaintiff on attaining majority and after death of next friend without complying with requirements of s.* 451, *Civil Procedure Code—Title of suit.*] Unless there is an absolute bar created by positive enactment, a person who has attained his full age is *primâ facie* entitled to proceed with a suit instituted on his behalf during his minority, or to make any application therein, and, if necessary, the Court will as a matter of course give him leave to proceed or act in his own name. When a person, on whose behalf a suit had been revived and carried on by his next friend, made, after attaining his majority, and long after the death of the next friend, an application in his own name for execution of the decree in the suit without having complied with the requirements of s. 451 of the Civil Procedure Code as to electing to proceed with the suit and obtaining leave of the Court to do so, and the application was admitted and notice of execution given to the defendant:—*Held*, under the circumstances, that such omission to comply with the requirements of s. 451, though an irregularity, was not a bar to the application being allowed to proceed. An application under s. 451 for leave to proceed with a suit does not require any notice, but may be made *ex parte* at any time. Even if the application in this case therefore were not itself a sufficient indication that the applicant elected to proceed with the suit, and that the Court in allowing him to proceed in his own name gave him the required leave (and *semble* that would be the case), the Court could give such leave at the hearing of the application *nunc pro tunc*. The provision of s. 451, which requires the title of a suit to be corrected in such a case applies to a pending suit, and not to a suit after final decree in which it only remains to proceed in execution. DOORGA MOHUN DASS *v.* TAHIR ALLY. TAHIR ALLY *v.* KOORSOMBOO.

[22 Calc. 270

(*f*) REFERENCE TO HIGH COURT.

7.—*Reference by Collector of decision under Mamlatdars Courts Act—Civil Procedure Code* (1882), *s.* 622—*Practice.*] The High Court will not interfere on a reference by the Collector with a Mamlatdar's Court's decision in a possessory suit. The aggrieved party can himself apply to the Court. *Satu* v. *Shivrambhat*, P. J. 1894, p. 52, followed. PANDU *v.* BHAVDU.

[21 Bom. 806

See VORA ISABALLI *v.* DAUDBHAI MASABHAI.

[14 Bom. 371

(*g*) REPORT OF REGISTRAR.

8.—*Exceptions to report—Notice—Rule* 565 *of Belchambers' Rules and Orders of the High Court, Original Side.*] In making an application to

PRACTICE—*continued.*

(1) CIVIL CASES—*continued.*

(*g*) REPORT OF REGISTRAR—*concluded.*

discharge or vary a report, it is necessary that notice should be given within the time required by Rule 565 of the Rules and Orders of the High Court, Original Side, and that such notice should be accompanied with the grounds of exceptions relied on by the party objecting to the report LUTCHMEE NARAIN *v.* BYJANAUTH LAHIA.

[24 Calc. 437

(*h*) SALE BY RECEIVER.

9.— *Obstruction of possession — Purchaser, Rights of — Code of Civil Procedure* (1882), *Chap. XIX, s.* 647—*Costs.*] Practice of the Original Side of the Court followed in recognising the right of a purchaser at a receiver's sale to obtain the assistance of the Court in obtaining possession under the provisions of the Court relating to sales in a suit. MINATOONNESSA BIBEE *v.* KHATOONNESSA BIBEE.

[21 Calc. 479

(*i*) SALE BY REGISTRAR.

10.—*Purchase-money, Payment of, into Court—Conditions of sale—Interest—Costs.*] Where the purchaser of a property at a Registrar's sale is out of time in paying into Court the balance of his purchase-money, the practice of the Original Side of the High Court is that payment of interest shall follow as a matter of course. But if there has been delay on the part of the party having the carriage of the proceedings, and if that party appears on the summons taken out by the purchaser for the purpose of paying into Court the balance of such purchase-money, he shall not be allowed his costs against the purchaser. KANYE LALL DASS *v.* SHAMA CHURN DAWN.

[21 Calc. 566

(*j*) STAY OF PROCEEDINGS.

11.—*Dismissal of suit, Effect of—Application to restrain receiver parting with funds, pending appeal—Power of Court.*] Under the Code of Civil Procedure, once a suit has been dismissed the Court dismissing it is *functus officio*, save that it may stay execution of its own decree or order for costs. An application therefore made to a Court of first instance after dismissal of the suit, but before appeal filed, asking that the receiver may be restrained from parting with funds in his hands pending an appeal, cannot be granted. YAMIN-UD DOWLAH *v.* AHMED ALI KHAN.

[21 Calc. 561

12.—*Companies Act* (*VI of* 1882), *s.* 134—*Winding up company—Stay of proceedings when petition to wind up is pending—High Court Rule No.* 10, *cl.* (*r*).] The plaintiff sued the defendant company to recover Rs. 10,000. The claim was not disputed, but shortly after the suit was filed another creditor filed a petition to wind up the company. This petition was pending when the suit came on for hearing, but no order to stay proceedings had been obtained by the defendants, and the plaintiff

PRACTICE—*continued.*

(1) CIVIL CASES—*concluded.*

(*j*) STAY OF PROCEEDINGS—*concluded.*

contended that, under the, circumstances he was entitled to obtain a decree, having regard to the fact that no such order had been made, and that by the rules of the Court [Rule No. 10, cl. (*r*)] such order could only be made in chambers:—*Held*, on application by the defendants at the hearing, that the proceedings must be stayed. VIRBAIJI *v.* WADIA MILLS CO.

[18 Bom. 65

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

[19 Bom. 51

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

See CHARGE—FORM OF CHARGE.

[17 All. 153

[24 Calc. 193

[18 All. 116

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[16 All. 207

See PLEA.

[19 All. 119

See RULE TO SHOW CAUSE.

[23 Calc. 347

See TRANSFER OF CRIMINAL CASE.

[19 All. 249

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[19 Bom. 749

See WITNESS—CRIMINAL CASES — EXAMINATION OF WITNESSES.

[16 All. 84

(2) CRIMINAL CASES.

(*a*) AFFIDAVIT.

13. —*Inadmissibility of affidavit of accused when Magistrate has recorded plea of guilty.*] Where a Magistrate has recorded that an accused person has pleaded guilty, an affidavit to the contrary sworn to by the accused is not admissible in evidence on revision by the High Court. QUEEN-EMPRESS *v.* BHASHYAM CHETTI.

[19 Mad. 209

(*b*) APPROVERS.

14.—*Application for sanction to prosecute an approver.*] An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in open Court. QUEEN-EMPRESS *v.* MANICK CHANDRA SARKAR.

[24 Calc. 492

(*c*) REVISION.

15.—*Criminal Procedure Code* (1882), *s.* 439—*Rule to show cause why conviction should not be quashed.*] A rule to show cause why a convic-

PRACTICE - *concluded.*

(2) CRIMINAL CASES—*concluded.*

(*c*) REVISION—*concluded.*

tion should not be quashed under the provisions of s. 439 of the Code of Criminal Procedure ought not to be granted unless on the materials which are before the Court when the rule is granted, it would be prepared to make the rule absolute if no cause be shown against it. BASIRADDI *v.* QUEEN-EMPRESS.

[21 Calc. 827

PRE-EMPTION.

		Col.
1.	Right of Pre-emption	... 991
2.	Construction of Wajib-ul-arz	... 995
3.	Purchase-Money	... 995
4.	Profits of Land	... 996
5.	Loss or Waiver of Right	... 996

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION.

——, Conditional decree for.

See APPEAL—ORDERS.

[16 All. 126

—— of portion of property.

See PLAINT—AMENDMENT OF PLAINT.

[17 All. 288

——, Right of.

See LIMITATION ACT, S. 28.

[20 Mad. 305

——, Suit for.

See JOINDER OF CAUSES OF ACTION.

[17 All. 274

See PLAINT—AMENDMENT OF PLAINT.

[17 All. 288

See VALUATION OF SUIT—SUITS.

[16 All. 493

See VENDOR AND PURCHASER—CONDITIONAL SALES.

[17 All. 451

(1) RIGHT OF PRE-EMPTION.

1.—*Pre-emption among co-sharers under the Oudh Laws Act (XVIII of 1876), ss. 9 to 13—Pre-emptor's right, as such, dependent on the intending vendor's right to sell—Accounts between co-sharers—Contribution, Right to, for expenses of suit.*] Pre-emption, as declared in the Oudh Laws Act, 1876, is not applicable where the co-sharer claiming it denies the title of the co-sharer proposing to sell, alleges that the latter is not a co-sharer, and says that he himself is entitled to the property. One of two co-sharers, entitled to equal shares in an inheritance, having taken possession of the whole, was sued by the other for her share, with mesne profits from the date of the suit. To provide costs, the latter had sold

PRE-EMPTION—*continued.*

(1) RIGHT OF PRE-EMPTION—*continued.*

to her co-plaintiffs the right to claim half of her share. The defences were—(1) relinquishment of her claim in favour of the defendant; (2) that the defendant had a right of pre-emption as to part, in consequence of the above transaction; (3) that the share in dispute was subject to a proportion of the debts due from the estate of the deceased, chargeable on the whole inheritance; and that, if the plaintiffs should be held to be entitled to a decree, they should also be declared liable to pay, according to shares, their part of all the debts of the deceased liquidated by the defendant, as well as a proportion of money which he had expended, in good faith, in litigation for the protection of the inheritance. As to (1), the two Courts below concurred in the finding that no relinquishment had taken place. As to (2), it was pointed out that there had been no attempt to sell a share of the inheritance, but only to sell a share in a suit; and it was *held*, that the position taken up by the defendant was inconsistent with his claiming to pre-empt, so that pre-emption was inapplicable. As to (3), it was *held*, that, although the plaintiffs could not have a decree for mesne profits during the whole period of the defendant's possession, yet, if any account was to be taken of the defendant's payments, it must also be taken of his receipts; and it was *held* that the incidental benefit to the plaintiffs, who had not authorised the litigation, in which expense had been incurred, did not give rise to any implied contract on their part, or render them liable in equity for any portion of that expense. ABDUL WAHID KHAN *v.* SHALUKA BIBI.

[21 Calc. 496

[L. R. 21 I. A. 26

2.—*Claim based upon custom—Evidence afforded by obsolete wajib-ul-arz—Rules of the Board of Revenue for the settlement of the Gorakhpur and Basti districts (B. E. C., 8—1, s. 38).*] The plaintiffs brought their suit in 1890 to pre-empt certain property situated in the Gorakhpur district. Their claim was based upon two grounds: one, an alleged contract said to be recorded in and proved by a *wajib-ul-arz* of 1860 relating to the village in question; and the other, a custom of pre-emption alleged to be existing in the village. The period during which the *wajib-ul-arz* of 1860 was in force expired prior to the sale which gave rise to the right of pre-emption sought to be enforced. Subsequently to the expiration of that *wajib-ul-arz*, certain rules had been framed, with reference to the settlement of the Gorakhpur and Basti districts, the material portions of which for the purposes of the present case, were as follows: "A memorandum of the village customs will be appended to each *khewat* by the Assistant Settlement Officer, when he verifies the *jamabandi*, and it will take the place of the document hitherto known as the *wajib-ul-arz*." * * * "In regard to any custom or constitution peculiar to the *mehal* the following matters should be noticed [class (*d*), s. 25]: (*a*) Pre-emption (as regards *mehals* which belong to other than

PRE-EMPTION—*continued.*

(1) RIGHT OF PRE-EMPTION—*continued.*

Mahomedan proprietors) when the proprietors expressly demand that it may be noted and proved conclusively that the custom exists." At the new settlement made in accordance with these rules, no mention of the right of pre-emption as obtaining in the *mehal* in question was recorded. Upon these facts it was *held* by EDGE, C. J., and BURKITT, J., that, having regard to the rules abovementioned framed by the Board of Revenue for the settlement of the Gorakhpur and Basti districts, the mere absence of any mention of the right of pre-emption in the new memorandum of village customs was in itself no evidence that the custom of pre-emption had ceased to exist, and that the *wajib-ul-arz* of 1860 might be used as evidence of the existence of such a custom. *Per* AIKMAN, J.—The absence from the new memorandum of village customs of any mention of the existence of a right of pre-emption was a circumstance which the Court would be entitled to take into consideration in any conflict of evidence as to whether or not the custom of pre-emption did exist. SADHU SAHU *v.* RAJA RAM.

[16 All. 40

3.—"*Co-sharer*"—"*Proprietor*"—*Transferee of lands in a village who has not obtained mutation of names in his favour—Wajib-ul-arz.*] In a suit for pre-emption under a *wajib-ul-arz* which gave a right of pre-emption to "co-sharers" in a village:—*Held* that the word "co-sharer" included a person who had acquired lands in the village, which were not merely *sir* of a co-sharer, and were not grove-lands held by a licensee from a zemindar, but lands belonging to a zemindar and in his occupation, notwithstanding the fact that he had not yet obtained mutation of names in respect thereof. DAKHNI DIN *v.* RAHIMUNNISSA.

[16 All. 412

4.—*Partition of village, originally one, into three separate mehals—New record of village customs framed on partition—Wajib-ul-arz—Co-sharers—Rules of the Board of Revenue of the 13th November, 1875—N.-W.P. Land Revenue Act (XIX of 1873), s. 257.*] Where at the settlement of a village constituting a single *mehal* a record of rights was framed giving certain pre-emptive rights to the co-sharers in the village, but subsequently the village was divided by perfect partition into three separate *mehals* and, in accordance with the rules of the Board of Revenue of the 13th November, 1875, issued under s. 257 of Act XIX of 1873, a new record of village customs was framed which did not give to the sharers in any one of the new *mehals* any right of pre-emption in respect of land situated in another *mehal*, it was *held* that the latter record of village customs was a valid and binding document, and no right of pre-emption existed in favour of the co-sharers in any one *mehal* in respect of land situated in another *mehal*. *Per* AIKMAN, J.—Where a village, originally one, is divided by perfect partition into two or more *mehals* unless at the time of partition a right of pre-emption is specifically reserved by the co-sharers in respect of lands lying outside any

PRE-EMPTION—*continued.*

(1) RIGHT OF PRE-EMPTION—*concluded.*

given *mehal*, such right of pre-emption is not to be presumed from the mere fact that when the village formed but one *mehal*, the co-sharers had pre-emptive rights against such other. *Mote Sah* v. *Gohlee*, S. D. A. N.-W. P. (1861), Vol. 2, p. 506; and *Jai Ram* v. *Mahabir Rai*, I. L. R. 7 All. 720, referred to. Under the above circumstances the mere retention of a community of interest in certain property such, *e.g.*, as roads, &c., will not give the sharers in one *mehal* any right of pre-emption over land situated in another. *Nazir-ud-din* v. *Kadir Baksh*. Weekly Notes, All. (1894) 193, referred to; *Gokal Singh* v. *Mannu Lal*, I. L. R. 7 All. 772, dissented from. GHURE *v.* MAN SINGH.

[17 All. 226

5.—*Effect of co-sharer vendee joining with himself in his purchase a stranger.*] When, in the purchase of immoveable property in respect of which a right of pre-emption exists, a vendee, being a person entitled to purchase, joins with himself in the purchase a stranger, then, in the event of a suit for pre-emption being brought, if the interest of the co-sharer vendee can be separated from the interest of the stranger vendee, the plaintiff pre-emptor can succeed only as against the stranger, the rights of the co-sharer vendee being equal or preferential to those of the pre-emptor. If, however, the interest of the co-sharer vendee cannot be separated from the interest of the stranger vendee, the plaintiff pre-emptor can succeed as against both. *Sheobharos Rai* v. *Jaich Rai*, I. L. R. 8 All. 462, approved; *Sheo Dyal Ram* v. *Bhyroo Ram*, S. D. A. N. W. (1860) 53; *Guneshee Lal* v. *Zaraut Ali*, 2 N. W. 343; and *Manna Singh* v. *Ramadhin Singh*, I. L. R. 4 All. 252, referred to. RAM NATH *v.* BADRI NARAIN.

[19 All. 148

See MUSHTAQ AHMAD *v.* AMJAD ALI.

[19 All. 311

BHUPAL SINGH *v.* MOHAN SINGH.

[19 All. 324

6.—*Hindu widow in possession of property of her deceased husband, but not as his heir—Stranger—Effect of joining a stranger as plaintiff in a suit for pre-emption.*] A Hindu widow in possession of the immoveable property of her deceased, husband, but not as his heir, there being a son living, has no right of pre-emption as a co-sharer by virtue of such possession, even though she may be recorded as a co-sharer in the village papers. *Phopi Ram* v. *Rukmin Kuar*, Weekly Notes, All. (1895) 84; and *Imam-ud-din* v. *Surjaiti*, Weekly Notes, All. (1895) 85, followed. BHUPAL SINGH *v.* MOHAN SINGH.

[19 All. 324

PHOPI RAM *v.* RUKMIN KUAR.

[19 All. 327 note

IMAM-UD-DIN *v.* SURJAITI.

[19 All. 329 note

PRE-EMPTION—*continued.*

(2) CONSTRUCTION OF WAJIB-UL-ARZ.

7.—*Right of pre-emption of co-sharer—Holder of resumed muafi—N.-W. P. Land Revenue Act (XIX of 1873), s. 62—Rules of the Board of Revenue, 1870, Department I, Rules 30 and 51.*] The plaintiff, a co-sharer in the village of Deobarampur, sued for pre-emption of certain land, being "resumed revenue-free land" in the village, which had been sold to a stranger. The clause of the *wajib-ul-arz*, under which pre-emption was claimed, was as follows:—"When any co-sharer (*hissadar*) is bent upon selling or mortgaging his right (*haqqiyat*), then first that co-sharer who is nearest to the sharer bent on transfer can take it: after that any other person who is interested (*sharik*) in the village rank by rank can take it. If no person interested in the village takes it, then a stranger may take it":—*Held* that, under the circumstances of the case, the plaintiff had no right of pre-emption in respect of the land claimed by him, the vendor not being, within the meaning of the *wajib-ul-arz*, a co-sharer in the village by virtue of his possession of a portion of the resumed *muafi*. KALLIAN MAL *v.* MADAN MOHAN.

[17 All. 447

8.—"*Stranger*—" *Effect of joining stranger as co-vendee.*] Under the terms of *a wajib-ul-arz* successive pre-emptive rights were given, first to "own brothers," secondly to "near cousins," thirdly to "shareholders":—*Held* (BURKITT J.) the parties being Mahomedans, that in regard to a sale of land to which this *wajib-ul-arz* applied, a nephew (brother's son) of the vendee was a "stranger," and his joinder as co-vendee would vitiate the sale and let in other persons having a right of pre-emption. *Bhurey Mal* v. *Nawal Singh*, I. L. R. 4 All. 259, distinguished. AMJAD ALI *v.* MUSHTAQ AHMAD.

[17 All. 454

In the same case, on appeal under the Letters Patent, this decision was upheld by EDGE, C. J., and KNOX, J. MUSHTAQ AHMAD *v.* AMJAD ALI.

[19 All. 311

(3) PURCHASE-MONEY.

9.—*Civil Procedure Code* (1882), *s.* 583—*Application for refund of money paid into Court by a successful plaintiff in a suit for pre-emption, the decree having been set aside on appeal—Interest.*] A plaintiff in a pre-emption suit obtained a decree and paid into Court the pre-emptive price as stated in that decree, and the money was drawn out of Court by the vendor. Subsequently the decree was reversed on appeal, and the plaintiff then applied, under s. 583 of the Code of Civil Procedure, for a refund of the money paid into Court as above described with interest:—*Held*, that the pre-emptor was entitled to a refund of the money together with interest up to date of repayment. *Rogers* v *Comptoir D'Escompte de Paris*, L. R. 3 P. C. 475, followed; *Jaswant Singh* v. *Dip Singh*, I. L. R. 7 All. 432, referred to; *Hatti Prasad* v. *Chattarpal Dubey*, Weekly Notes, All. (1888) 287, dissented from. BHAGWAN SINGH *v.* UMMAT-UL-HASNAIN.

[18 All. 262

PRE-EMPTION—*continued.*

(3) PURCHASE-MONEY—*concluded.*

10.—*Decreed pre-emptive price paid into Court by pre-emptor—Subsequent partial withdrawal by a creditor of the decree-holder of the money so paid in.*] The holder of a decree for pre-emption paid the decreed pre-emptive price into Court. A creditor of the decree-holder applied for attachment of the money so paid in, and ultimately was allowed by the Court to withdraw a portion of it. After the decree for pre-emption had been confirmed in appeal, the pre-emptor applied for possession of the pre-empted property:—*Held*, that the decree-holder was entitled to obtain possession, and that it was not competent to the Court to pay out to anyone but the person entitled to it under the decree for pre-emption any portion of the pre-emptive price, so long as the decree for pre-emption was not modified or reversed in appeal. ABDUS SALAM *v.* WILAYAT ALI KHAN.

[19 All. 256

(4) PROFITS OF LAND.

11.—*Lambardar collecting rents for co-sharer—Right of suit by pre-emptor to recover profits accruing between the date of his decree and the time when he obtained mutation of names—Principal and agent.*] *Held*, that a pre-emptor who had obtained a decree for pre-emption in respect of a share in a pure zemindari village could not successfully maintain a suit against the judgment-debtor co-sharer for the profits of the pre-empted share accruing between the date of the original decree and the date of his obtaining mutation of names, such profits having been collected by the *lambardar*, but not paid over to the judgment-debtor; inasmuch as neither could the *lambardar* be considered as an agent of the co-sharer, whose possession of the profits was the possession of his principal, nor was there any obligation on the co-sharer to collect the profits and hold them to the use of the plaintiff. SRI KISHEN LAL *v.* ATMA RAM.

[19 All. 261

(5) LOSS OR WAIVER OF RIGHT.

12.—*Non-payment of price fixed by decree within the time limited by decree—Effect of an appeal from a decree for pre-emption on the time limited for paying in the pre-emptive price—Limitation—Civil Procedure Code* (1882), *s.* 214.] A decree was given in favour of the plaintiff in a suit for pre-emption. The plaintiff paid in a portion only of the pre-emptive price within the time limited by the decree. The defendant appealed. Long after the time prescribed for payment by the original decree had expired, the defendant's appeal was dismissed, but the time for payment was not extended by the Appellate Court's decree. The plaintiff then, after the lapse of a period from the date of the appellate decree in excess

(5) LOSS OR WAIVER OF RIGHT—*concluded.*

of that which had been given him for payment by the decree of the first Court, paid in the balance of the pre-emptive price, which was accepted by the Court. On appeal by the defendant from the Court's order directing the balance of the pre-emptive price to be received, it was *held* that the order of the Court allowing the payment was without jurisdiction, the decree having, on the expiration of the time limited without payment by the plaintiff, become a decree in favour of the defendant, and the plaintiff having therefore lost his right of pre-emption under it. JAGGAR NATH PANDE *v.* JOKHU TEWARI.

[18 All. 223

13.—*Effect on right of pre-emption of breach on a former occasion of the provisions of the wajib-ul-arz relating to pre-emption.*] *Semble:* That a claimant for pre-emption under a *wajib-ul-arz* would not forfeit his right to pre-emption if upon a former occasion he had violated the provisions of the *wajib-ul-arz* by mortgaging his share to a stranger. *Gokul Chand* v. *Ram Prasad*, Weekly Notes, All. (1889) 127, followed; *Bhajjo* v. *Lalman*, I. L. R. 5 All. 180, referred to. UJAGAR LAL *v.* JIA LAL.

[18 All. 382

14.—*Effect on right of pre-emption of joining a stranger in suit for pre-emption—Amendment of plaint—Striking out name of party.*] Where a plaintiff having a right to pre-empt joins with himself in a suit for pre-emption a stranger, *i.e.*, a person who has no such right, he thereby forfeits his right to pre-empt, and this disability cannot be overcome by amending the plaint by striking out the name of the stranger. *Bhawani Prasad* v. *Damru*, I. L. R. 5 All. 147; *Ram Nath* v. *Badri Narain*, I. L. R. 19 All. 148; and *Fida Ali* v. *Muzaffar Ali*, I. L. R. 5 All. 65, referred to. BHUPAL SINGH *v.* MOHAN SINGH.

[19 All. 324

PRESCRIPTION.

		Col.
1. Easements	...	997
(*a*) Land	...	997
(*b*) Light and Air	...	998
(*c*) Privacy	...	1000
(*d*) Rights concerning Water	...	1000
(*e*) Trees	...	1000

(1) EASEMENTS.

(*a*) LAND.

1.—*Right to place tazias on certain plot of land during Moharram—Easements Act (V of 1882), ss. 4 and 18—Customary right—Facts necessary to establish the existence of a customary right.*] The plaintiff sued for possession of a piece of land which, he alleged, formed part of the court-yard of his *kothi*, and for demolition of a *chabutra* thereon. The defendants denied the plaintiff's title, and alleged that they always used the *chabutra* as a sitting place, and that during the *Moharram* the *tazias* and *alums* were exhibited upon the *chabutra* and a *takht* was placed upon it. The Court of first instance found that the defendants had a right to use the land in the manner claimed during the *Moharram*. The lower Appellate Court on the question of the defendants' right to use the said land in the manner claimed by them found as follows:—"That various *mirasis*, whose connexion with each other is not established, have within a period of twenty years or so placed *tazias* upon the land and sung there":—*Held*, *per* AIKMAN, J.—A right to place *tazias* on a certain plot of land during the *Moharram* is a right of the nature of the customary easements referred to in s. 18 of Act V of 1882, and may be acquired as such by prescription. *Ashraf Ali* v. *Jagan Nath*, I. L. R. 6 All. 497, referred to:—*Held*, on appeal, by EDGE, C. J., and BANERJI, J., that this finding of fact did not necessarily in law lead to the conclusion that there was a local custom by virtue of which the easement now claimed by the defendants was acquired. Where a local custom excluding or limiting the general rules of law is set up, a Court should not decide that it exists unless such Court is satisfied of its reasonableness and its certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted, or by stealth, or by force, and that it had been openly enjoyed for such a length of time as suggests that originally by agreement or otherwise the usage had become a customary law of the place in respect of the persons and things which it concerned. KUAR SEN *v.* MAMMAN.

[17 All. 87

reversing on appeal under the Letters Patent. MAMMAN *v.* KUAR SEN.

[16 All. 178

(*b*) LIGHT AND AIR.

2.—*Obstruction of right to light and air—Suit for injunction or damages—Specific Relief Act (I of 1877.)*] The plaintiff was the owner of a house in Jambulwadi Street in Bombay. The defendant owned a house to the east of it, and between the two houses was a *gully* three feet seven inches wide, the part of which next the defendant's house was a gutter. On the ground floor of the plaintiff's house were four windows, and on the first floor two windows, all looking out into the *gully*, and all of them ancient windows. The defendant's house originally was a little higher than the plaintiff's house and consisted of a ground floor, a first floor and a loft. Shortly before suit, the defendant pulled down this house, and on the same site began to build a new four-storied house with a loft. The plaintiff sued for an injunction, alleging that this new house, which would be of much greater height than the old one, would completely block up his ancient windows and cause him material damage, there being no other window in his house on the side next the defendant. The defendant in his written statement denied that his

PRESCRIPTION—*continued.*

(1) EASEMENTS—*continued.*

(*b*) LIGHT AND AIR—*continued.*

new house would cause material damage to the plaintiff. He alleged that his old house, which was higher than the plaintiff's, had a projecting cornice, so that hardly any direct light came to the plaintiff's windows, which were almost, if not entirely, lighted by the light that came from each end of the *gully*. He further stated that his new house would have no cornice, and that he had widened the *gully*, so that light to the plaintiff's windows would not be appreciably diminished, but that even if the passage had not been widened there would have been little diminution of light. He also alleged that the plaintiff had other windows and sources of light than the said six windows. While denying all damage, the defendant, however, to avoid litigation and without prejudice paid into Court Rs. 200, which he said was more than sufficient to compensate the plaintiff. After filing the suit the plaintiff obtained a rule for an injunction at the date of which the walls of the defendant's house had been built up as far as the second floor. The rule was subsequently discharged, the defendant consenting that the case should be argued at the hearing as if the new house was then in the same condition. The defendant, however, subsequently continued, to build, and at the date of hearing it was practically complete. The lower Court (STARLING, J.) found that prior to the building of the new house direct light came to the plaintiff's windows to the extent at all events of 5," and in addition to this a considerable amount of lateral light came to the windows over the defendant's roof. The Court held that, as the plaintiff had a right to this light by prescription, he was absolutely entitled to the whole of it: that the defendant had by his new building cut off all the direct light, and that practically all the light left to the plaintiff was reflected light, the amount of which depended on the condition in which the defendant might choose to keep the walls of his house. Under these circumstances the lower Court, looking at the house as if it was still in the condition in which it was at the time the injunction was discharged, held that the plaintiff was entitled to a mandatery injunction, and directed the defendant to remove the upper portion of the house which had been built since that time. On appeal:—*Held*, that although the plaintiff's light had been sensibly diminished by the defendant's new building, there had not been such a large, material and substantial damage as to require interference by injunction, or that the plaintiff's room had been rendered unfit for the purpose for which it might reasonably be expected to be used. The appeal Court therefore varied the decree of STARLING, J., and refused an injunction, but ordered the defendant to pay the plaintiff Rs. 500 as damages. GHANASHAM NILKANT NADKARNI *v.* MOROBA RAMCHANDRA PAI.

[18 Bom. 474

3.—*Infringment of right to light and air—Injunction—Specific Relief Act (I of 1877), s. 54.*] *Dhanjibhoy* v. *Lisboa*, I. L. R. 13 Bom. 252; and *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, I. L. R. 18 Bom. 474, followed and approved as to the circumstances in which the Court will grant an injunction where a right to light and air is infringed. SULTAN NAWAZ JUNG *v.* RUSTOMJI NANABHOY.

[20 Bom. 704

PRESCRIPTION—*concluded.*

(1) EASEMENTS—*concluded.*

(*b*) LIGHT AND AIR—*concluded.*

4.—*Right to light and air—Right to have building removed—Sufficient light, Right to access of.*] An easement of light to a window only gives a right to have buildings that obstruct it removed so as to allow the access of sufficient light to the window. BALA *v.* MAHARU.

[20 Bom. 788

(*c*) PRIVACY.

5.—*Custom—Right of privacy.*] The customary right of privacy which prevails in various parts of the North-Western Provinces is a right which attaches to property, and is not dependent on the religion of the owner of such property. ABDUL RAHMAN *v.* EMILE; EMILE *v.* ABDUL RAHMAN.

[16 All. 69

(*d*) RIGHTS CONCERNING WATER.

6.—*Right to have water carried off over neighbour's land—How far it interferes with right of erecting buildings.*] A right to have water carried away over the adjoining land does not give its owner any power to prevent the erection of buildings on the adjoining ground so long as the arrangements necessary to the preservation of his right are made. BALA *v.* MAHARU.

[20 Bom. 788

7.—*Easements Act (V of 1882), s. 2 (b)—Easement over a well—Customary right to use the well.*] No fixed period of enjoyment is laid down by law as necessary to establish a customary right, and a customary right to use a well may exist apart from a dominant heritage. PALANIANDI TEVAN *v.* PUTHIRANGONDA NADAN.

[20 Mad. 389

(*e*) TREES.

8.—*Trees overhanging neighbours' land—Right to have branches of trees cut—Nuisance—Easement Act (V of 1882).*] Plaintiff sued for an injunction restraining the defendant from allowing the branches of a tree belonging to him to overhang plaintiff's land, and for an order directing him to cut off the branches. Defendant pleaded that the branches of his tree had projected over plaintiff's land for forty years, and contended he had therefore acquired a prescriptive right of the nature of an easement over plaintiff's land:—*Held*, that the plaintiff was entitled to cut away the branches which overhang his land, though they had done so for more than forty years. HARI KRISHNA JOSHI *v.* SHANKAR VITHAL.

[19 Bom. 420

PRESIDENCY MAGISTRATE, JURISDICTION OF.

See COMMISSION—CRIMINAL CASES.
[24 Calc. 551

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[24 Calc. 528

——, Statement made to.

See CONFESSION—CONFESSIONS TO MAGISTRATE.
[21 Bom. 495

PRESIDENCY TOWNS SMALL CAUSE COURT ACT (XV OF 1882).

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS.

——, s. 22.

See COSTS — SPECIAL CASES — SMALL CAUSE COURT SUITS.
[24 Calc. 399
[21 Bom. 779

——, s. 37.

See CIVIL PROCEDURE CODE, s. 108.
[21 Calc. 269

PRESIDENCY TOWNS SMALL CAUSE COURT ACT (I OF 1895).

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS.

——, s. 11.

See COSTS — SPECIAL CASES — SMALL CAUSE COURT SUITS.
[24 Calc. 399
[21 Bom. 779

PRESUMPTION.

See BENGAL TENANCY ACT, s. 56.
[24 Calc. 169

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 11.
[20 Bom. 732

See ENDOWMENT.
[16 All. 412

See GRIEVOUS HURT.
[19 Bom. 247

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—MANAGER.
[21 Bom. 808

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

PRESUMPTION—*concluded.*

See LANDLORD AND TENANT — COMPENSATION FOR IMPROVEMENTS ON LAND.
[18 Bom. 66

See LANDLORD AND TENANT — NATURE OF TENANCY.
[22 Calc. 533
[L. R. 22 I. A. 60
[18 Bom. 433
[19 Mad. 485

See LANDLORD AND TENANT—TRANSFER BY TENANT.
[24 Calc. 152

See N.-W. P. AND OUDE MUNICIPALITIES ACT, S. 55.
[19 All. 493

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.
[20 Bom. 367

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
[24 Calc. 256

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.
[18 Mad. 41

See STOLEN PROPERTY, OFFENCES RELATING TO.
[21 Calc. 328

See USER.
[16 All. 181

See WILL—EXECUTION.
[21 Calc. 279

See WITNESS—CRIMINAL CASES — PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.
[18 Bom. 468

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).

——, ss. 2 and 3.—*Crabs—Animals—Cruelty to animals.*] The provisions of Act XI of 1890 apply to cruelty exercised towards any animal which is either "domestic" or which being *feræ naturæ* has been "captured" and is in captivity. Crabs are "animals" within the definition of s. 2 of Act XI of 1890. If a person exposes them for sale at a public place with their legs broken and with their shells crushed in so as necessarily to cause them pain, he incurs the penalty prescribed by s. 3 of the Act. TULSI BEWAH *v.* SWEENEY.
[24 Calc. 881

PRIEST, APPOINTMENT OF.

See CHURCH.
[17 Mad. 447

PRIMOGENITURE.

See HINDU LAW—CUSTOM—IMPARTIBILITY.

[19 All. 1
[L. R. 23 I. A. 147

See OUDE ESTATES ACT, s. 22.

[21 Calc. 997
[L. R. 21 I. A. 163

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

PRINCIPAL AND AGENT.

Col.
1. Commission Agents 1003

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUNDS FOR SETTING THEM ASIDE.

[24 Calc. 469

See ATTACHMENT — SUBJECTS OF ATTACHMENT—DEBTS.

[16 All. 286

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.

[20 Bom. 633

See PRE-EMPTION — PROFITS OF LAND.

[19 All. 261

(1) COMMISSION AGENTS.

—Contract Act, s. 202—*Agency to sell, coupled with interest—Discretion as to price left with agent—Power of principal to impose limits as to price.*] The defendant consigned goods to a firm in London for sale, and in respect of each consignment he received an advance from the plaintiff who was the agent of the London firm, and signed a consignment note which contained the following passage:—" I hereby authorise you to sell the above goods at the best price obtainable without reference to me, and I give you full discretion and power to act on my behalf to the best of your judgment in regard to such sale and in all matters connected with the management of this consignment. Should there be any short fall after realisation of the above consignment, I hereby authorise you to draw on me for the amount, and I engage to honour such draft and to pay it on presentation." The plaintiff guaranteed the payment of the redrafts to the London firm on whose account he made the advances to the defendant. Short falls having occurred on certain consignments, and the London redrafts having been dishonoured, the plaintiff paid them, and now sued to recover the amount from the defendant. It appeared that consignments had been sold at prices less than certain limits which have been fixed by the defendant subsequent to the receipt of the advances and the signature of the consignment notes:—*Held*, that the defendant had no right (regard being had to the terms of the consignment note and the course of dealing between the parties) so to impose limits of price, and that the plaintiff was entitled to recover. KONDAYYA CHETTI *v.* NARASIMHULU CHETTI.

[20 Mad. 97

PRINCIPAL AND SURETY.

See EXECUTION OF DECREE — MODE OF EXECUTION — PRINCIPAL AND SURETY.

[19 Bom. 578

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867).

——, ss. 3 and 12.—" *Publisher*," *Meaning of.*] The word " publisher " has been used in the Printing Presses and Newspaper Act (XXV of 1867) in the restricted sense, and does not include a person who merely sells a book or a paper. QUEEN-EMPRESS *v.* BANKA PATNI.

[23 Calc. 414

PRIORITY OF DEEDS.

See CASES UNDER REGISTRATION ACT, s. 50.

PRIVACY.

——, Intrusion on.

See CRIMINAL TRESPASS.

[22 Calc. 391, 994

——, Right of.

See JURISDICTION OF CIVIL COURT — PRIVACY, INVASION OF.

[18 Mad. 163

See PRESCRIPTION—EASEMENTS—PRIVACY.

[16 All. 69

See RIGHT OF SUIT—PRIVACY, INVASION OF.

[18 Mad. 163

PRIVATE DEFENCE, RIGHT OF.

See PENAL CODE, s. 332.

[18 All. 246

See RIOTING.

[24 Calc. 686

—Penal Code (Act XLV of 1860), *s.* 99—*Obstruction of, and resistance to, Inspector searching house without warrant—Officer acting illegally but in good faith—Madras Abkari Act, ss.* 31 *and* 36.] A Sub-Inspector of Salt and Abkari attempted, without a search warrant, to enter a house in search of property, the illicit possession of which is an offence under the Madras Abkari Act, and was obstructed and resisted:—*Held*, that having regard to s. 99 of the Penal Code, even though the Sub-Inspector was not strictly justified in searching a house without a warrant, the persons obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of their obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice. QUEEN-EMPRESS *v.* PUKOT KOTU.

[19 Mad. 349

PRIVILEGE.

See DEFAMATION.

[22 Calc. 46
[17 Mad. 87
[19 Bom. 51, 340

See FALSE CHARGE.

[19 Bom. 51

See LIBEL.

[23 Calc. 867

PRIVILEGED COMMUNICATION.

—Professional communication — Privilege, Extent of—How far solicitor bound to disclose communication made in course of employment — Attorney and client—Evidence Act (I of 1872), s. 126.] The law relating to professional communications between a solicitor and a client is the same in India as in England. It is not every communication made by a client to an attorney that is privileged from disclosure. The privilege extends only to communications made to him confidentially, and with a view to obtaining professional advice. Where a solicitor claims privilege under s. 126 of the Indian Evidence Act (I of 1872), he is bound to disclose the name of his client, on whose behalf he claims the privilege. The mere fact that the client's name had been communicated to him in the course and for the purpose of his employment as solicitor by another client, affords no excuse, unless it was communicated to him confidentially, on the express understanding that it was not to be disclosed. But a solicitor is not at liberty, without his client's express consent, to disclose the nature of his professional employment. Section 126 of the Indian Evidence Act protects from publicity not merely the details of the business, but also its general purport, unless it be known *aliunde* that such business falls within proviso I or II to the section. At an interview between a solicitor and a client, the solicitor took down a certain statement made by a person named *A B* who was in his client's company, and whose name was communicated to him in the course and for the purpose of his professional employment. *A B* was afterwards tried for defamation, and the solicitor was examined by the prosecution with reference to the statement made to him by the accused at the above interview. The solicitor was asked whether the person who had made the statement had given his name as *A B*. The solicitor declined to answer the question on the ground of privilege:—*Held*, that the solicitor was bound to answer the question, unless *A B's* name was communicated to him by his client in confidence with a view to its not being disclosed. FRAMJI BHICAJI *v.* MOHANSING DHANSING.

[18 Bom. 263

PRIVITY.

See BENGAL TENANCY ACT, SS. 69 AND 70.

[22 Calc. 480

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

[18 Mad. 13

PRIVY COUNCIL, ORDERS AND DECREES OF.

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

[22 Calc. 1011
[L. R. 22 I. A. 203

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

[22 Calc. 960
[23 Calc. 357

PRIVY COUNCIL, PRACTICE OF. *Col.*

1. Record, Preparation of ...1006
2. Special Leave to Appeal ...1006
3. Valuation of Appeal ...1007
4. Stay of Execution pending Appeal ...1007
5. Restoration of Appeal ...1007
6. Objections by Respondent ...1007
7. Revivor of Appeal ...1008
8. Concurrent Judgments on Fact ...1008
9. Rehearing ...1009
10. Costs ...1009

(1) RECORD, PREPARATION OF.

1.— *Decision limited to one of several issues of law—Omission of immaterial matter in preparation of printed book.*] In a suit in which the Original Court had framed and decided several issues, the High Court, on appeal, confined their decision to the questions which, in their opinion, governed the case, leaving other issues undecided as not affecting the result after the decision to which they had come. Afterwards the suit was admitted to appeal in conformity with s. 603, Code of Civil Procedure. In the preparation of the printed copy of the record the question arose whether the copy should be made of the whole record, or of only so much of it as was material to the correctness of the High Court's decision. Their Lordships directed that only so much of the original record as bore upon, and was material to, the questions decided by the High Court, and the subject of the appeal, should be printed in the copy. VENKATA SURIYA MAHIPATI RAM KRISHNA RAO *v.* COURT OF WARDS.

[20 Mad. 395
[L. R. 24 I. A. 194

(2) SPECIAL LEAVE TO APPEAL.

2.—*Decrees of the High Court made on cross-appeals—Procedure.*] The High Court passed a separate decree, on a cross-appeal, identical in terms with those of a decree passed on the appeal in the same suit. From the latter decree an appeal to Her Majesty in Council was then declared by the High Court to be admitted, under s. 603, Civil Procedure Code. But the defendant's application to have his appeal from the decree on the cross-appeal similarly admitted was refused. The Judicial Committee was of opinion that special leave should be granted to appeal from this decree, without further security being required than had already been taken in respect

PRIVY COUNCIL, PRACTICE OF—*continued.*

(2) SPECIAL LEAVE TO APPEAL—*concluded.*

of the appeal in the other. MUHAMMAD IKRAM-UD-DIN *v.* NAJIBAN.

[19 All. 95
[L. R. 23 I. A. 167

(3) VALUATION OF APPEAL.

3.—*Abandonment on appeal of part of amount of claim—Reduction of claim to below prescribed limit of appealable amount.*] The defendants, having a *bonâ fide* intention to appeal in respect of the whole amount decreed, obtained the certificate and admission of their appeal as competent within the Code of Civil Procedure. Afterwards, in their printed case and at the hearing, they withdrew part of their appeal, reducing, by so doing, the amount in dispute to one below the limit prescribed for appeals, where there is no special leave obtained:—*Held,* that this did not render the appeal incompetent. KALKA SINGH *v.* PARAS RAM.

[22 Calc. 434
[L. R. 22 I. A. 68

(4) STAY OF EXECUTION PENDING APPEAL.

4.—*Civil Procedure Code* (1882), *s.* 608, *sub-section* (*c*).] The High Court having, under s. 603, sub-section (*a*) of the Civil Procedure Code, declared the admission of an appeal from their decree, refused an order, applied for under s. 608, sub-section (*c*), for staying execution pending the appeal, the two Judges constituting the Court differing as to whether or not the case was such that the application should be granted. Their Lordships decided that the execution of the decree should be stayed pending the appeal. An order of Her Majesty in Council followed to that effect. CHATRAPAT SINGH DURGA *v.* DWARKANATH GHOSE.

[22 Calc. 1
[L. R. 21 I. A. 170

(5) RESTORATION OF APPEAL.

5.—*Petition to restore an appeal—Terms under which it was restored.*] Under Rule 5 of the Orders in Council of the 13th June, 1893, an appeal was dismissed for want of prosecution on the 8th October, 1896. The record had been received on the 15th January, 1896, and since then no steps had been taken. The delay having been explained, and the cause of it considered sufficient, the appeal was restored to the file, on conditions as to costs, and on security to be given in England. RABIABAI *v.* MAHOMED ISMAIL KHAN.

[21 Bom. 723
[L. R. 24 I. A. 128

(6) OBJECTIONS BY RESPONDENT.

6.—*Objection taken without cross appeal—Alteration of decree asked for by respondent without cross appeal—Civil Procedure Code* (1882), *s.* 561.] In reference to whether the decree made against one of the respondents could be varied in his favour, he not having filed a cross-appeal, the rule prevailed that he could only be heard to support the decree, s. 561 of the Civil Procedure Code not applying in an appeal to the Privy Council. CASPERSZ *v.* KISHORI LAL ROY CHOWDHRI.

[23 Calc. 922

(7) REVIVOR OF APPEAL.

7.—*Revivor of appeal which had abated—Alteration of form of claim on appeal—Succession or inheritance.*] Leave to revive an appeal, in a case governed by the Oude Estates Act (I of 1869), which abated on the appellant's death before the hearing, was obtained by the younger daughter of the deceased *talukdar*, one of the defendants; she being next among those who would have a claim to inherit the *taluk* in succession should the appeal be decreed:—*Held,* that the appellant by revivor must be restricted to the suit for the *taluk*, and could not advance on this appeal any claim of her own which she might have preferred in a suit to inherit property which had belonged to the deceased other than the *talukdari* estate. UMRAO BEGUM *v.* IRSHAD HUSAIN.

[21 Calc. 997
[L. R. 21 I. A. 163

(8) CONCURRENT JUDGMENTS ON FACT.

8.—*Findings of fact on documentary evidence apart from construction.*] Against a claim for the proprietary right by inheritance brought by the nearest *bandhu* or cognate heir, of the deceased, the defendant, in possession, set up his adoption by the widow under her husband's authority. The Courts below had found that no such authority had been given, and that the widow, not adopting to her husband, had adopted the defendant as her son. The Courts below had also concurred in finding against the fact of a *dattaka* adoption having taken place, which would have had the effect of removing one of the plaintiff's ancestors into another family, whereby a necessary link in the succession would have been lost to the plaintiff's title had this adoption been proved. As a ground for interference with these findings of fact, it was suggested that the evidence consisted, in a great measure, of documents of which the construction had been matter for decision, thus rendering the questions to be other than of fact, but it was held that they turned on the effect of the evidence afforded by the documents, and not on the construction, so that there was no reason for departing from the ordinary rule as to the concurrence of two Courts upon fact. LACHMAN LAL CHOWDHRI *v.* KANHAYA LAL MOWAR.

[22 Calc. 609
[L. R. 22 I. A. 51

9.—*Effect of reception in evidence on appeal of documents rejected by first Court.*] The merits of a claim depended upon the authenticity of an *anumati patro* (deed of permission to adopt) alleg-

PRIVY COUNCIL, PRACTICE OF—*concluded.*

(8) CONCURRENT JUDGMENTS ON FACT—*concluded.*

ed to have been given to a widow by her husband. The first Court found that the instrument was not genuine. The High Court, on appeal, upheld this finding, but had considered relevant, and admitted in evidence, documents rejected by the first Court when tendered by the appellants. This reception of evidence afforded no reason for making the case an exception to the application of the rule, in the discretion of the Committee, against the disturbance of concurrent decisions upon a fact in issue below. HURRI BHUSAN MUKERJI *v.* UPENDRA LAL MUKERJI.

[24 Calc. 1
[L. R. 23 I. A. 97

(9) REHEARING.

10.—*Grounds for rehearing—Alleged want of notice to respondent—Appeal heard ex parte.*] There is no rule, among those made by the High Court under the authority of law, that the respondent in an appeal to the Queen in Council shall receive formal notice of the transmission of the record of the appeal, of the pendency whereof he has had notice. The mere allegation that the respondents in this appeal had, in consequence of their having had no express notice that the appeal had been set down for hearing, allowed the hearing of the appeal to take place *ex parte* was not considered sufficient to entitle them to a rehearing thereof. LALTA PRASAD *v.* AZIZ-UD-DIN.

[19 All. 209
[L. R. 24 I. A. 49

(10) COSTS.

11.—*Ex-parte appeals—Costs of respondent.*] Where appeals are heard *ex parte* and dismissed, the respondent is nevertheless entitled to costs up to and including the lodgment of the case, and also to the costs of application for that purpose. SUMBHU NATH SANTRA MAHAPATRA *v.* SURJAMONI DEI.

[L. R. 24 I. A. 191
[25 Calc. 187

PROBATE.

		Col.
1.	Jurisdiction of District Court	... 1011
2.	Application for Probate	... 1011
3.	To whom Granted	... 1011
4.	Opposition to, and Revocation of, Grant	... 1012
5.	Effect of Probate	... 1013

See APPEAL—PROBATE.

[21 Calc. 539

See COSTS—SPECIAL CASES—PROBATE.

[21 Bom. 75

See EXECUTOR.

[21 Bom. 400

PROBATE—*continued.*

——, Application for.

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[20 Bom. 238
[21 Bom. 335

See JURISDICTION—TESTAMENTARY JURISDICTION.

[20 Bom. 238
[21 Bom. 335

See LIMITATION ACT, ART. 178.

[17 Mad. 379

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[21 Bom. 563

——, Duty on taking out.

See COURT-FEES ACT, S. 19D.

[23 Calc. 980

See COURT-FEES ACT, SCH. I, ART. 11.

[23 Calc. 577
[21 Bom. 139
[24 Calc. 567
[21 Bom. 673

—— issued from Native Court.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[17 Mad. 14

——, Obligation to obtain.

See EXECUTOR.

[20 Bom. 227

——, Order granting.

See LETTERS PATENT, HIGH COURT—N.-W. P., CL. 10.

[17 All. 475

——, Refusal of.

See RES JUDICATA — ESTOPPEL BY JUDGMENT.

[21 Bom. 563

See WILL—REVOCATION.

[20 Bom. 370

——, Refusal to allow party to oppose.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[21 Calc. 539

——, Refusal to take out.

See LETTERS OF ADMINISTRATION.

[19 Bom. 123

PROBATE—*continued.*

——, Valuation for.

See COURT-FEES ACT, SCH. I, ART. 11.

[23 Calc. 577

(1) JURISDICTION OF DISTRICT COURT.

1.—*Probate and Administration Act (V of 1881), ss. 56 and 57—Testator subject of the Baroda State—Will executed at Baroda—Disposition of immoveable property in British India—Jurisdiction of Courts in British India.*] Under s. 56 of the Probate and Administration Act (V of 1881) a District Judge has jurisdiction to grant probate of a will executed out of British India by a person who is not a British subject, if the testator had at the time of his death moveable or immoveable property within the jurisdiction of the Judge. The discretion vested in a Judge by s. 57 of that Act does not extend to a case where there is no Court of concurrent jurisdiction in India to which application for probate can be made. The validity of a will which purports to dispose of immoveable property in British India must be tested by the rules applicable to the execution of wills in British India. BHAURAO DADAJIRAO *v.* LAKHSMIBAI.

[20 Bom. 607

(2) APPLICATION FOR PROBATE.

2.—*Withdrawal of application before proceeding became contentious—Right of applicant to propound will in opposition to application for grant of letters of administration—Succession Act, s. 261—Effect of withdrawal of previous application for probate of same will without leave to apply again—Civil Procedure Code, s. 373.*] Where a person applied for probate of a will but withdrew the application before the proceedings became contentious:—*Held*, that he was entitled as caveator to propound the same will in opposition to an application for grant of letters of administration to the estate of the deceased:—*Held*, further, that though the provisions of the Civil Procedure Code are applicable to suits under Act X of 1865, s. 261, still, in the present case, the application for probate had been withdrawn before the proceedings became contentious, and that therefore s. 373, Civil Procedure Code, was not applicable. PAKIAM PILLAI *v.* INNASI FERNAND.

[19 Mad. 458

(3) TO WHOM GRANTED.

3.—*Probate and Administration Act (V of 1881)—Discretion of Court as to refusal to grant probate—Executor.*] Where, on application for probate by a person appointed executor by the will, the genuineness of the will is not disputed, and the applicant is a person not legally incapable, the Court acting under the Probate and Administration Act (V of 1881) has no discretion to refuse probate on the ground that in its opinion the applicant is not a fit and proper person to be appointed executor. HARA COOMAR SIRCAR *v.* DOORGAMONI DASI.

[21 Calc. 195

PROBATE—*continued.*

(3) TO WHOM GRANTED—*concluded.*

4.—*Executor without means to pay fees—Application by executor for probate in formâ pauperis—Civil Procedure Code (1882), s. 647.*] Where an executor is not in possession of the property of his testator and cannot get possession of it, and where he has not himself the means of paying the necessary fees, he may be allowed to petition for, and, if entitled thereto, to obtain, probate *in formâ pauperis*. IN THE MATTER OF THE WILL OF DAWUBAI.

[18 Bom. 237

(4) OPPOSITION TO, AND REVOCATION OF, GRANT.

5.—*Will by a Hindu widow in respect of property inherited from her deceased husband—Invalid will—Ground for refusing probate.*] A Court is not justified in refusing to grant probate of a will because the testator had no power to dispose of some or even all of the property he purported to deal with. BAROT PARSHOTAM KALU *v.* BAI MULI.

[18 Bom. 749

6.—*Interest entitling person to apply for revocation—Hindu law—Inheritance — Succession to property of degraded and outcaste woman—Right of her husband's family in her property acquired while degraded.*] In an application for revocation of probate of the will of *K*, which had been granted to *D*, it appeared that *K* was a Hindu widow, who many years ago left her husband's family dwelling-house and became a woman of the town, that she had lived under the protection of *D* for 35 years; that when she came to *D*, she had no property, but that all the property she left had been acquired by her while in a degraded and outcaste state:—*Held*, that the applicant as her husband's sister's son, had no interest in her estate entitling him to maintain the application. The general rule, that the tie of kindred between a woman's natural family and herself ceases when she becomes degraded and an outcaste, applies with even greater force as between her and the members of her husband's family. Those members therefore have no right of inheritance in property acquired by a woman who leaves her husband's family and becomes degraded. IN THE GOODS OF KAMINEYMONEY BEWAH.

[21 Calc. 697

7.—*Interest in testator's estate—Defendant in suit for probate of will—Legatee—Creditor of testator—Proof of former will.*] In a suit brought to obtain probate of a will the defendant, before he can contest the will, must show that he has some interest in the testator's estate. The fact of being a legatee under the will, or a creditor of the testator, does not amount to such an interest. But proof of a former will of the testator in which the defendant is interested is a sufficient interest to contest the will set up. RAHAMTULLAH SAHIB *v.* RAMA RAU.

[17 Mad. 373

8.—*Issue raised as to testator's title to property purporting to be dealt with by the will—*

PROBATE—*concluded.*

(4) OPPOSITION TO, AND REVOCATION OF, GRANT—*concluded.*

Practice.] It is not the duty of a Court entertaining an application for grant of probate to consider any issue as to the title of the testator to the property with which the will propounded purports to deal, or as to what disposing power the testator may have possessed over such property. *Behary Lall Sandyal* v. *Juggo Mohun Gossain*, I. L. R. 4 Calc. 1; *Hormusji Navroji* v. *Rai Dhanbaiji*, I. L. R. 12 Bom. 164; *Arunamoyi Dasi* v. *Mohendra Nath Wadadar*, I. L. R. 20 Calc. 888; and *Bavot Parshotam Kalu* v. *Bai Muli*, I. L. R. 18 Bom. 749, referred to; *Tharp* v. *Macdonald*, L. R. 3 P. D. 76; and *Annoda Sundari Dasi* v. *Jugutmani Dabi*, 6 C. L. R. 176, distinguished. BIRJ NATH DE *v.* CHANDAR MOHUN BANERJI.

[19 All. 458

9.—*Ground for revocation of probate—Probate and Administration Act (V of 1881), s. 50, expl. 4—Just cause—"Mismanagement by executor."*] Mismanagement by the executor of an estate is not, under s. 50, expl. 4 of the Probate and Administration Act, a just cause for revoking the probate:—*Held*, therefore, that the order of revocation made by the District Judge for that cause was made without jurisdiction and must be set aside. The words "just cause" as explained in s. 50 of the Probate and Administration Act are not illustrative merely, but exhaustive. ANNODA PROSAD CHATTERJEE *v.* KALLIKRISHNA CHATTERJEE.

[24 Calc. 95

(5) EFFECT OF PROBATE.

10.—*Necessity of probate—Guardian appointed under a will—Whether probate is a condition precedent to certificate of guardianship under Guardians and Wards Act (VIII of 1890).*] It is not incumbent on a person, who has been appointed guardian of a minor under a will, to take out probate as a condition precedent to his obtaining a certificate of guardianship under Act VIII of 1890. PATHAN ALIKHAN BADLUKHAN *v.* BAI PANIBAI.

[19 Bom. 832

11.—*Necessity of probate—Will made by Hindu—Suit by legatee for legacy—Hindu Wills Act, 1870.*] Save where the Hindu Wills Act, 1870, is in force, it is not obligatory on a person claiming under the will of a Hindu to obtain probate of the will before instituting his claim. *Krishna Kinkur Roy* v. *Panchuram Mundul*, I. L. R. 17 Calc. 272; and *Thakurain* v. *Ram Charan*, Weekly Notes, All. (1895) 87, followed. KANHAIYA LAL *v.* MUNNI.

[18 All. 260

PROBATE AND ADMINISTRATION ACT (V OF 1881).

See ADMINISTRATOR-GENERALS ACT, s. 31.

[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concluded.*

See CASES UNDER LETTERS OF ADMINISTRATION.

See CASES UNDER PROBATE.

——, s. 3.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[24 Calc. 30

——, s. 18.

See LETTERS OF ADMINISTRATION.

[19 Bom. 123

——, s. 50.

See WILL—EXECUTION.

[21 Calc. 1

——, ss. 51 to 87.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 475

——, s. 53.

See APPEAL—PROBATE.

[21 Calc. 539

——, s. 59.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[21 Bom 563

——, s. 83.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[21 Bom. 563

——, s. 86.

See APPEAL—PROBATE.

[21 Calc. 539

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[24 Calc. 30

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 475

——, s. 90.

See EXECUTOR.

[23 Calc. 580, 908

See LETTERS PATENT, HIGH COURT, CL. 15.

[23 Calc. 580

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT.

[23 Calc. 546

PROCEDURE.

See Under the heading in respect of which the particular procedure is required.

PROCEEDINGS OF LEGISLATURE.

See STATUTE, CONSTRUCTION OF.

[22 Calc. 1017

PROCESSION.

—— in public road.

See JURISDICTIONS OF CIVIL COURT — PROCESSIONS.

[24 Calc. 524
[18 Bom. 693

See RIGHT OF SUIT — OBSTRUCTION OF PUBLIC HIGHWAY.

[18 Bom. 693

——, Powers of Police in dealing with.

See MADRAS POLICE ACT, s. 21.

[17 Mad. 37

PROCLAMATION.

—— for person absconding.

See ABSCONDING OFFENDER.

[19 Mad. 3

——, Right of Government to withdraw.

See FOREST ACT, ss. 75 AND 76.

[18 Bom. 670

—— of sale, Charges noted in.

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[18 Bom. 175

See STAMP ACT, SCH. I, ART. 16.

[18 Bom. 175

PRODUCTION OF DOCUMENTS.

See INTERROGATORIES.

[23 Calc. 117

PROFITS.

See CASES UNDER MESNE PROFITS.

——, Suit for.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—MISCELLANEOUS SUITS.

[16 All. 28, 333

See PRE-EMPTION—PROFITS OF LAND.

[19 All. 261

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—PROFITS OF LAND.

[21 Bom. 248

PROMISSORY NOTE.

Col.

1. Assignment of, and Suits on, Promissory Notes ...1016

See NEGOTIABLE INSTRUMENTS ACT, S. 13.

[17 Mad. 85

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

[20 Bom. 367

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.

[17 Mad. 262

See STAMP ACT, S. 3, CL. 4.

[17 All. 211

——, Suit on.

See CERTIFICATE OF ADMINISTRATION —RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[17 Mad. 108

See COMPANY — WINDING-UP — DUTIES AND POWERS OF LIQUIDATORS.

[18 Mad. 498

See CONTRACT ACT, S. 23 — ILLEGAL CONTRACTS—GENERALLY.

[20 Mad. 84

See LETTERS OF ADMINISTRATION.

[17 Mad. 147

See MAJORITY ACT, S. 3.

[21 Bom. 281

See PLEADER—REMUNERATION.

[17 Mad. 306

(1) ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

1.—*Negotiable Instruments Act (XXVI of* 1881), *s.* 46—*Effect of an invalid endorsement of a promissory note by payee—Note recovered by, but not re-indorsed to, the payee.*] The defendant gave plaintiff a promissory note payable on demand. The plaintiff endorsed the note to a third party, a creditor of his, who sued the defendant on the note on his refusal to pay. The defendant pleaded that it had been agreed between the payee and himself that the note should not take effect until the payee had performed certain conditions which remained unperformed. The suit was accordingly dismissed. The plaintiff thereupon paid the endorsee and took back the note, which, however, was not re-indorsed, and instituted the present suit against the defendant, who pleaded that the property in the note was not vested in the original plaintiff so as to enable him to maintain the suit. On the decease of the plaintiff before the trial, his sons were substituted as plaintiffs:—*Held*, that, although the property in a promissory note payable to order on demand passes by endorsement and delivery. (Act XXVI of 1881, s. 46), the endorsement in this case had been de-

PROMISSORY NOTE—*concluded.*

(I) ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES—*concluded.*

clared invalid in the suit referred to and must therefore be treated as cancelled, and consequently the property in the note was vested in the plaintiff at the date of the suit so as to enable him to maintain it. MARIMUTHU PILLAI *v.* KRISHNASAMI CHETTI.

[17 Mad. 197

2.—*Negotiation—Assignment by payee of all his property including the promissory note—Absence of endorsement—Negotiable Instruments Act (XXVI of 1881), ss. 8 and 9.*] A promissory note payable to payee or order cannot be negotiated by the mere assignment by the payee of all his property including the note. *Pattat Ambadi Marar* v. *Krishnan*, I. L. R. 11 Mad. 290, followed. ABBOY CHETTI *v.* RAMACHANDRA RAU.

[17 Mad. 461

3.— *Contemporaneous collateral agreement consistent with the terms of the promissory note—Right of suit under Chap. XXXIX, Civil Procedure Code*] The plaintiffs advanced money to defendant for the supply of certain goods. On defendant's failure to supply the goods, plaintiffs pressed for repayment, and a promissory note payable on demand for the amount due was executed; at the same time an agreement was entered into by defendant to liquidate the amount due on the promissory note by fortnightly consignments, the consignment to be made within fourteen days of the date of the promissory note. On defendant's failure to send the consignments as promised, a suit was brought under Chap. XXXIX, Civil Procedure Code:—*Held* that the suit was rightly filed under Chap. XXXIX; that the agreement to liquidate the amount due by fortnightly consignments was a collateral undertaking consistent with the existence of the note containing an absolute promise to pay; that such collateral agreement was no answer to the suit on the promissory note; and that the plaintiff was entitled to a decree. SIMON *v.* MAHOMED SHERIFF.

[19 Mad. 368

PROPERTY.

—— at disposal of Government.

See RIGHT OF SUIT—PROPERTY AT DISPOSAL OF GOVERNMENT.

[19 Bom. 668

See TREASURE TROVE.

[19 Bom. 668

——, Defective description of.

See REGISTRATION ACT, S. 21.

[18 Mad. 364

—— found on accused.

See CRIMINAL PROCEDURE CODE, S. 517.

[24 Calc. 499

PROPERTY—*concluded.*

—— in different districts.

See JURISDICTION — SUITS FOR LAND — PROPERTY IN DIFFERENT DISTRICTS.

[16 All. 359

[17 All. 483

——, Injury to enjoyment of.

See CASES UNDER RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

——, Obstruction to rights of.

See INJUNCTION — SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[19 Bom. 269

—— seized by Police.

See CRIMINAL PROCEDURE CODE, S. 523

[22 Calc. 761

PROPRIETOR.

See LAND REGISTRATION ACT, S. 38.

[24 Calc. 404

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION, SS. 11 AND 25.

[22 Calc. 473

PROSTITUTION.

See PENAL CODE, S. 372.

[21 Calc. 97

See PENAL CODE, S. 373.

[18 All. 24

[22 Calc. 164

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

See MUNSIF, JURISDICTION OF.

[20 Mad. 155

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL.

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.

——, s. 15.

See VALUATION OF SUIT—SUITS.

[24 Calc. 661

——, s. 16.

See MUNSIF, JURISDICTION OF.

[19 Mad. 477

——, s. 23.

See MUNSIF, JURISDICTION OF.

[23 Calc. 425

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concluded.*

——, s. 25.

See LETTERS PATENT, HIGH COURT, CL. 15.

[17 Mad. 100.

See REVISION — CIVIL CASES — SMALL CAUSE COURT CASES.

[16 All. 476
[17 All. 422
[21 Bom. 250

——, s. 27.

See LETTERS PATENT, HIGH COURT, CL. 15.

[17 Mad. 100

——, s. 35.

See MUNSIF, JURISDICTION OF.

[17 Mad. 445

PROVOCATION, GRAVE AND SUDDEN.

See CULPABLE HOMICIDE.

[18 All. 497

PROVOCATION TO RIOTING.

See PENAL CODE, S. 153.

[18 Bom. 758

PUBLIC BODY, DELEGATION OF POWERS TO.

See PORTS ACT, S. 6.

[17 Mad. 118

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880).

See APPEAL—ORDERS.

[22 Calc. 419

See LIMITATION ACT, ACT. 12.

[23 Calc. 775
[L. R. 23 I. A. 45

See REVIEW—POWER TO REVIEW.

[22 Calc. 419

1.—s. 2.—*Bengal Act VII of* 1868, *s.* 8—*Certificate of sale—Evidence of sufficiency of service of notice of sale—Act XI of* 1859.] Section 2 of the Public Demands Recovery Act (Bengal Act VII of 1880), which enacts that "that Act, so far is consistent with the tenor thereof, shall be construed as one with Act XI of 1859 and Bengal Act VII of 1868" does not extend the effect of s. 8 of Bengal Act VII of 1868 to a sale-certificate granted under s. 19 of Bengal Act VII of 1880, so as to make such a certificate conclusive evidence of the sufficiency of the service of the notices of sale under the last-named Act. PULIN CHANDRA ROY *v.* AKBAR HOSSEIN.

[21 Calc. 350

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*concld.*

2.—s. 2 and s. 8.—*Bengal Act VII of* 1868, *s.* 2—*Suit to set aside certificate and sale for arrears of cesses—Right of suit—Appeal.*] No suit will lie to set aside the sale of a property sold in execution of a certificate issued by the Collector for arrears of cesses, where it is found by the Court that there was an unsatisfied arrear at the time of the sale. The only remedy of the judgment-debtor, whose property has been sold, is by way of an appeal to the Commissioner under s. 2 of Bengal Act VII of 1868. *Sadhusaran Singh* v. *Panchdeo Lal*, I. L. R. 14 Calc. 1, followed. TROYLUCKHO NATH MOZUMDAR *v.* PAHAR KHAN.

[23 Calc. 641

——, s. 7 and s. 10.—*Sale for arrears of cesses—Collector's certificate, Effect of, after notice of it.*] According to the true construction of s. 7 of Bengal Act VII of 1880, there is no foundation for a sale thereunder, until a certificate has been made by the Collector strictly in the manner prescribed thereby, specifying the sum due and the person from whom it is due:—*Held*, that such certificate when duly made, has, after service of notice thereof under s. 10, the effect of a decree so far as regards the remedies for enforcing it. BAIJNATH SAHAI *v.* RAMGUT SINGH.

[23 Calc. 775
[L. R. 23 I. A. 45

PUBLIC DOCUMENTS.

See EVIDENCE ACT, S. 74.

[20 Mad. 189

PUBLIC FUNCTIONS.

See PENAL CODE, S. 186.

[22 Calc. 286, 596
[23 Calc. 896

PUBLIC HEALTH, OFFENCE AFFECTING.

—*Penal Code, s.* 269—*Negligent Act—Refusal to allow person suffering from infectious disease to be removed to a hospital.*] Where a mother refused to allow her daughter suffering from small-pox to be removed to a hospital in accordance with an order made by the District Magistrate, unless she accompanied her, and was convicted of an offence under s. 269 of the Penal Code by the District Magistrate:—*Held*, that no unlawful or negligent act had been committed within the meaning of s. 269 of the Penal Code. CAHOON *v.* MATHEWS.

[24 Calc. 494

PUBLIC HIGHWAY, ROAD, STREET OR THOROUGHFARE.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 17.

[20 Bom. 146

PUBLIC HIGHWAY, ROAD, STREET OR THOROUGHFARE—*concluded.*

See LAND ACQUISITION ACT, 1870, SS. 13 AND 24.

[L. R. 24 I. A. 177
[25 Calc. 194

——, **Allowing water to remain on.**

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 54.

[20 Bom. 83

——, **Encroachment on.**

See LIMITATION ACT, ART. 149.

[19 Mad. 154

——, **Obstruction to.**

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 42.

[19 Bom. 212

See JURISDICTION OF CIVIL COURT—PROCESSIONS.

[24 Calc. 524
[18 Bom. 693

See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

[18 All. 158

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[24 Calc. 395

See NUISANCE — PUBLIC NUISANCE UNDER PENAL CODE.

[20 Mad. 433

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY.

[18 Bom. 693
[22 Calc. 551
[24 Calc. 524

——, **Rash riding on.**

See PENAL CODE, S. 279.

[19 Bom. 715

PUBLIC OFFICER.

See ATTACHMENT — SUBJECTS OF ATTACHMENT—SALARY.

[24 Calc. 102

See STAMP ACT, SCH. I, ART. 22.

[19 All. 293

——, **Suit against.**

See CIVIL PROCEDURE CODE, S. 424.

[24 Calc. 584

PUBLIC PLACE.

See PENAL CODE, S. 159.

[17 All. 166

PUBLIC POLICY.

——, **Agreement contrary or not to.**

See CONTRACT ACT, S 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

[17 Mad. 9
[23 Calc. 645
[18 Mad. 374

See COSTS—TAXATION OF COSTS.

[17 Mad. 162

See EXECUTOR.

[22 Calc. 14

PUBLIC PROSECUTOR.

——, **Discretion of.**

See WITNESS—CRIMINAL CASES — EXAMINATION OF WITNESSES.

[16 All. 84

PUBLIC RECORD.

See EVIDENCE ACT, S. 35.

[23 Calc. 366
[21 Bom. 695

PUBLIC SERVANT.

See FALSE EVIDENCE — FABRICATING FALSE EVIDENCE.

[19 All. 305

See ILLEGAL GRATIFICATION.

[21 Bom. 517

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT, SUITS AGAINST.

[18 Mad. 395

——, **Assaulting, in discharge of duty.**

See PENAL CODE, S. 332.

[18 All. 246

——, **Disobedience to order of.**

See CONTEMPT OF COURT—PENAL CODE, S. 174.

[20 Mad. 31

See NUISANCE — PUBLIC NUISANCE UNDER PENAL CODE.

[19 Mad. 464

——, **Obstructing.**

See PENAL CODE, S. 186.

[22 Calc. 286, 596, 759
[23 Calc. 896

PUBLICATION.

See DEFAMATION.

[18 Bom. 205
[19 Bom. 703

PUBLISHER.

See PRINTING PRESSES AND NEWSPAPER ACT.

[23 Calc. 414

PURCHASE-MONEY.

See PRE-EMPTION—PURCHASE-MONEY.

[18 All. 262
[19 All. 256

——, Application to set off.

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[23 Calc. 196

——, Computation of.

See STAMP ACT, SCH. I, ART. 16.

[18 Bom. 175

——, Default in payment of.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[18 Mad. 439

——, Payment of, into Court.

See CIVIL PROCEDURE CODE, S. 307.

[20 Bom. 745

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[21 Calc. 566

——, Receipt for.

See REGISTRATION ACT, S. 17.

[21 Bom. 533

——, Suit for recovery or refund of.

See BENAMI TRANSACTION — GENERAL CASES.

[19 Mad. 60

See LIMITATION ACT, ART. 97.

[18 Mad. 173

See LIMITATION ACT, ART. 132.

[18 Bom. 48

See PRE-EMPTION—PURCHASE-MONEY.

[18 All. 262

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[17 Mad. 228
[18 Bom. 594

PURCHASE-MONEY—*concluded.*

See VENDOR AND PURCHASER—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER.

[19 All. 489
[24 Calc. 897
[21 Bom. 827

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[18 Bom. 48

PURCHASER.

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE.

[18 Bom. 315

See CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUIT.

[16 All. 286
[17 All. 222
[24 Calc. 62

See LIMITATION ACT, ART. 134.

[19 Bom. 140

See PARTIES—PARTIES TO SUITS—PURCHASERS.

[24 Calc. 334

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

[18 Mad. 13

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[22 Calc. 802

——, Liability of.

See LANDLORD AND TENANT — LIABILITY FOR RENT.

[19 Bom. 528

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[21 Calc. 169

See VENDOR AND PURCHASER—NOTICE.

[19 Bom. 391

——, Suit by assignee of.

See LIMITATION ACT, ART. 138.

[18 Mad. 144

——, Title of.

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

[19 All. 188

—— with leave to bid.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[18 Mad. 153

PURCHASERS, RIGHTS OF.

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS.

See BENGAL CESS ACT, S. 47.

[24 Calc. 27

See EASEMENT.

[18 Bom. 382

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[22 Calc. 909
[L. R. 22 I. A. 129

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS.

[21 Bom. 797

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM COPARCENER.

[20 Mad. 243
[21 Bom. 797

See HINDU LAW — WIDOW — DECREES AGAINST WIDOW AS REPRESENTING ESTATE OR PERSONALLY.

[22 Calc. 974

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[24 Calc. 37

See KHOTI SETTLEMENT.

[20 Bom. 78

See LIMITATION ACT, ART. 144 — ADVERSE POSSESSION.

[19 Bom. 620

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See MORTGAGE—ACCOUNTS.

[20 Mad. 120

See RIGHT OF WAY.

[19 Bom. 797

See CASES UNDER SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

See SALE FOR ARREARS OF RENT—SURPLUS-PROCEEDS OF SALE.

[24 Calc. 746

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.

[24 Calc. 334

See CASES UNDER SALE FOR ARREARS OF REVENUE — PURCHASERS, RIGHTS AND LIABILITIES OF.

PURCHASERS, RIGHTS OF—*concluded.*

See SALE IN EXECUTION OF DECREE—INVALID SALES—SALE PENDING APPEAL.

[23 Calc. 857

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[22 Calc. 909

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

See CASES UNDER VENDOR AND PURCHASER.

QUESTION OF FACT.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACT.

[23 Calc. 918
[L. R. 23 I. A. 102

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[17 All. 475

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACT.

See REMAND—CASES OF APPEAL AFTER REMAND.

[19 Mad. 422

See CASES UNDER REVISION—CRIMINAL CASES—QUESTIONS OF FACT.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—ALTERING, SETTING ASIDE, OR REVERSING DECREE.

[19 Mad. 96

See CASES UNDER SPECIAL OR SECOND APPEAL — GROUNDS OF APPEAL—QUESTIONS OF FACT.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[20 Bom. 630

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[22 Calc. 179

QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

[21 Calc. 484
[20 Bom. 699

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH.

[19 Mad. 485

QUESTION OF LAW—*concluded.*

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[18 Bom. 679
[19 Bom. 331

QUESTIONS OF LAW AND FACT.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH.

[21 Bom. 91

QUO WARRANTO, WRIT OF.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31.

[22 Calc. 717

RAILWAY.

——, Cattle straying on.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT.

[18 Mad. 228

RAILWAY COMPANY.

——, Liability of.

See LIMITATION ACT, ART. 30.

[19 Bom. 165

1.—*Railways Act* (*IX of* 1890), *ss.* 72 *and* 76—*Contract Act* (*IX of* 1872), *ss.* 151, 152 *and* 161—*Carriers Act* (*III of* 1865)—*Liability of Railway Companies as bailees.*] Subject to the provisions of Act IX of 1890, the responsibility of Railway Companies for loss of goods delivered to them for carriage is that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act. In a suit for damages occasioned by such a loss, the plaintiff need not prove how the loss occurred, but on proof of the loss, the company will, in absence of proof of any ground upon which it can be exonerated, be liable as a bailee. SESHAM PATTER *v.* MOSS.

[17 Mad. 445

2.—*Railways Act* (*IV of* 1879), *s.* 11—*Loss of goods—Liability of company — Declaration of value and nature of goods and payment of increased charge.*] In January, 1890, a box containing rupees was delivered by the plaintiffs to the defendant company in Bombay to be carried to Saugor. From the evidence it appeared that the plaintiffs did not intend to insure the box. The box was taken to the booking office at the station, and the parcel clerk asked what it contained, and was told that it contained coin, and he learned casually that the amount was Rs. 6,000. The clerk charged Rs. 18-1-0 for the box, which was the "treasure rate" for carriage. This sum was paid, and the box was duly despatched, but was lost or stolen in the course of transit. The plaintiffs sued to recover the Rs. 6,000. The defendants contended that, having regard to the provisions of s. 11 of Act IV of 1879, they were not liable, inasmuch as (1) the contents of the box had not been duly disclosed, nor (2) had an increased charge been paid. The plaintiffs obtained a decree in the lower Court. On appeal, *held* (reversing the decree) that the defendant company was not liable (1) because there was no sufficient declaration of the value and contents of the box; (2) because the sum paid by the plaintiffs for the carriage of the box was the ordinary charge for treasure, and was not the increased charge which under s. 11 of Act VI of 1879 should have been paid in order to make the company liable. GREAT INDIAN PENINSULAR RAILWAY CO. *v.* RAISETT CHANDMULL.

RAILWAY COMPANY—*concluded.*

[19 Bom. 165

RAILWAYS ACT (IV OF 1879).

——, s. 11.

See LIMITATION ACT, ART. 30.

[19 Bom. 165

See RAILWAY COMPANY.

[19 Bom. 165

——, s. 72.—*Contract saving liability of company for loss of goods carried by it—"Risk note."*] The contract embodied in what is commonly known as a "risk note," *i.e.*, a contract whereby in consideration of goods being carried by a railway company at a reduced rate, the consignor agrees that the company shall be free of all responsibility for any loss or damage to the goods, is a valid and legal contract within the terms of s. 72 of Act IX of 1890. *Suntokh Rai* v. *East Indian Railway Co.*, 2 Agra, 200, distinguished. EAST INDIAN RAILWAY CO. *v.* BUNYAD ALI.

[18 All. 42

RAILWAYS ACT (IX OF 1890).

——, ss. 72 and 76.

See RAILWAY COMPANY.

[17 Mad. 445

——, s. 75.—*Liability of railway company for loss of goods.*] (1) The words "loss, destruction or deterioration" in s. 75 of the Indian Railways Act, IX of 1890, include loss caused by the criminal misappropriation of the parcel by a servant of the railway administration in charge thereof. (2) Under s. 75 of that Act, it is necessary that both the value and contents of a parcel (if over Rs. 100 in value) should be declared before the railway administration can be held liable in respect thereof. (3) The payment by a consignor of silver coin of the specie rate required by the general regulations of a railway company to be paid for the carriage of such goods is not such a payment as satisfies the requirements of s. 75 of the Indian Railways Act, IX of 1890. BALARAM HARICHAND *v.* SOUTHERN MAHRATTA RAILWAY CO.

[19 Bom. 159

RAILWAYS ACT (IX OF 1890)—*concld.*

——, **s. 77.**—*Notice of suit—Agent of Manager—Traffic Superintendent—Civil Procedure Code* (1882), *ss.* 147 *and* 149—*Practice—Pleading.*] The Traffic Superintendent is not the Manager's agent, and notice to him is not notice to the railway administration within s. 77 of the Indian Railways Act (IX of 1890). Under s. 77 of the Indian Railways Act, it is not necessary for the defendant to plead want of notice of action in order to avail himself of it, but he may raise the objection at the hearing. SECRETARY OF STATE FOR INDIA *v.* DIB CHAND PODDAR.

[24 Calc. 306

——, **s. 113.**—*Excess charge and fare, Non-payment of—Power of Magistrate to impose imprisonment in default—Fine—Imprisonment.*] Section 113, sub-section 4 of the Indian Railways Act, (IX of 1890) which directs that on failure to pay on demand excess charge and fare when due, the amount shall on application be recovered by a Magistrate as if it were a fine, does not authorise the Magistrate to impose imprisonment in default. The excess charge and fare referred to in the section is not a fine, though it may be recovered as such. QUEEN-EMPRESS *v.* KUTRAPA.

[18 Bom. 440

QUEEN-EMPRESS *v.* SUBRAMANIA AYYAR.

[20 Mad. 385

——, **s. 125.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT.

[18 Mad. 228

RATIFICATION.

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

[24 Calc. 469

RECEIPT.

—— **for Counsel's fees.**

See STAMP ACT, SCH. II, ART. 15.

[16 All. 132

—— **for purchase-money.**

See REGISTRATION ACT, S. 17.

[21 Bom. 533

—— **for mortgage-debt.**

See REGISTRATION ACT, S. 17.

[18 All. 338

[19 Mad. 288

—— **for rent.**

See EVIDENCE — CIVIL CASES — RENT RECEIPTS.

[24 Calc. 251

RECEIVER.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[21 Calc. 85

See PRACTICE—CIVIL CASES—SALE BY RECEIVER.

[21 Calc. 479

——, **Application for appointment of.**

See PARTIES—PARTIES TO SUITS—EXECUTORS.

[19 Bom. 83

——, **Application to restrain, parting with funds.**

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.

[21 Calc. 561

——, **Attachment of money in hands of.**

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[21 Calc.

——, **Liability of, to account.**

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

[22 Calc. 1011

[L. R. 22 I. A. 203

——, **Lien of.**

See EXECUTION OF DECREE — ORDERS AND DECREES OF PRIVY COUNCIL.

[22 Calc. 960

——, **Order refusing to appoint.**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—FINALITY OF DECREE OR ORDER.

[22 Calc. 928

——, **Power to appoint.**

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.

[19 All. 235

1.—*Appointment of receiver—Temporary injunction—Civil Procedure Code* (1882), *ss.* 492 *and* 503.] The distinction between a case in which a temporary injunction may be granted and a case in which a receiver may be appointed, is that, while in either case, it must be shown that the property should be preserved from waste or alienation; in the former case, it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged; while in the latter case, a good *primâ facie* title has to be made out. *Sidheswari Dabi* v. *Abhoyeswari Dabi*, I L. R. 15 Calc. 818, approved. An order of

RECEIVER—*continued.*

the lower Court for appointment of a receiver under s. 503 of the Civil Procedure Code, Act XIV of 1882, was set aside, and an order for a temporary injunction under s. 492 of the Code granted. CHANDIDAT JHA *v.* PADMANAND SINGH.

[22 Calc. 459

2.—*Civil Procedure Code* (1882), *s.* 503—*Appointment of receiver—Waste or misappropriation of property as a ground for appointing a receiver.*] The fact that the acts complained of amount to misappropriation rather than waste makes no difference for the purposes of s. 503 of the Code of Civil Procedure. HANUMAYYA *v.* VENKATASUBBAYYA.

[18 Mad. 23

3.—*Administration, Suit for—Receiver appointed where executor is in possession—Suit against executor where will not proved—Will of Mahomedan testator.*] The rule of the Court of Chancery, that a receiver will not be appointed against an executor unless gross misconduct was shown, is not applicable to the case of an executor of the will of a Mahomedan. HAFIZABAI *v.* ABDUL KARIM.

[19 Bom. 83

4.—*Jurisdiction of District Judge to appoint receiver—Civil Procedure Code* (1882), *ss.* 503 *and* 505.] A District Judge has no jurisdiction to appoint a receiver of properties which are the subject of a suit or attachment in other Courts, even though such Courts may have been subordinate to his Court. (Sections 503 and 505 of the Civil Procedure Code reviewed.) In a suit upon a mortgage, the mortgaged property was directed to be sold, and the time of grace had expired. An application was then made by the judgment-debtor to the Court of execution for the appointment of a receiver under s. 503, both as regards the mortgaged property as well as other properties belonging to the judgment-debtor:—*Held*, that the Court had no power to appoint a receiver of properties other than the subject-matter of the suit, and as regards the mortgaged property a receiver could not be appointed on the mere ground that the property would not fetch so much by forced sale as it would by sale under a private contract. LATAFUT HOSSEIN *v.* ANUNT CHOWDHRY.

[23 Calc. 517

5.—*Civil Procedure Code* (1882), *s.* 505—*Power of District Court under s.* 505 *as to appointment of receiver.*] The concluding words of s. 505 of the Code of Civil Procedure—"or pass such order as it thinks fit"—must be read as controlled by the words preceding them, and do not confer upon the District Court the power itself to appoint a receiver not nominated by the Subordinate Court. AMAR NATH *v.* RAJ NATH.

[18 All. 453

6.—*Appointment of a receiver—Nomination by Subordinate Courts with grounds of nomination—Sanction of the District Judge—Order passed by the District Judge—Power to review—Civil Procedure Code* (1882), *s.* 505.] The District Judge made an *ex-parte* order for the appointment of a receiver under s. 505 of the Civil Procedure Code (Act XIV of 1882). Subsequently it having been shown to the Judge that the nomination made by the Subordinate Judge on which the order was passed was incorrect, the District Judge made an order admitting a review. The plaintiff appealed to the High Court. Without deciding whether an appeal would lie against the order of the District Judge, the High Court dismissed the appeal, holding that the order of the District Judge having in the first instance been *ex parte* he had clearly the power to review it. The words of s. 505 give the District Judge full discretion to pass such order as the circumstances of the case in all their bearings require: the "nomination" in that section is equivalent to the conditional appointment of a receiver which the District Judge can accept or reject, or modify. CHUNILAL HAJARIMAL *v.* SONIBAI.

[21 Bom. 328

7.—*Duration of receivership—Discretion of Court—Practice—Variance between judgment and decree—Civil Procedure Code, s.* 206.] It is within the discretion of a Court appointing a receiver in a suit to order that the office should continue permanently after the decree when such continuance is necessary, or for so long as it may be so. A decree of the High Court declared it to be necessary that a permanent appointment should be made of a receiver and manager of the estate allotted by the Government to the family of the deceased Maharajah of Tanjore, and directed that fresh appointments to the receivership should be made from time to time as occasion might require during the life of the senior widow, under whose management the estate had been originally placed, and the lives of the co-widows surviving her, or for so long as the Court might consider necessary:—*Held*, that the decree directing the permanent receivership was not in variation of the judgment which it purported to follow; that the Court had a discretion to make such an order when necessary for the preservation of the estate: and that so doing was in accordance with the practice; there being nothing to prevent the Court from giving the management to the senior widow living at the time, if she should be fit to manage the estate on behalf of all interested in it. MATHUSRI UMAMBA BOYI SAIBA *v.* MATHUSRI DIPAMBA BOYI SAIBA.

[19 Mad. 120
[L. R. 23 I. A. 28

8.—*Duties and liability of receiver—Civil Procedure Code* (1882), *s.* 503—*Costs.*] A receiver appointed under s. 503 of the Civil Procedure Code (Act XIV of 1882), to collect the rents of an estate, is bound to make good a loss caused to it by a breach of his duties. A receiver is not justified in delegating or entrusting to another a duty entrusted to him by the Court. He should in all important matters apply for and obtain the direction of the Judge who appoints

RECEIVER—*concluded.*

him. A receiver is entitled to his costs, charges, and expenses, properly incurred in the discharge of his duties. BALAJI NARAYAN PATVARDHAN *v.* RAMCHANDRA GOVIND KANADE.

[19 Bom. 660

9.—*Duties and liabilities of receiver—Receiver appointed by Court under s.* 503 *of Civil Procedure Code* (1882)—*Misappropriation by receiver of money collected by him—Liability for loss so caused — Civil Procedure Code* (1882), *s.* 258 — *Effect of as to satisfaction of decree and discharge of judgment-debtor.*] In execution of a decree a receiver was appointed to collect certain rents due to the judgment-debtor. Some of the judgment-debtor's tenants paid the rents due by them into the hands of the receiver, but the receiver did not pay the money into Court:—*Held* by MUTTUSAMI AYYAR, J.—In cases in which a receiver, appointed at the instance of the judgment-creditor under s. 503 of the Code of Civil Procedure, misappropriates moneys collected by him, the decree is not satisfied *pro tanto*, but the loss falls on the estate or its owner, subject to the receiver's liability. ORR *v.* MUTHIA CHETTI.

[17 Mad. 501

Held, on appeal under the Letters Patent, *per* SHEPHARD, J., that the payment by the tenants to the receiver did not *pro tanto* discharge the judgment-debtor from liability under the decree:—*Held*, *per* DAVIES, J., that payment by the tenants to the receiver *pro tanto* discharged the judgment-debtor from liability under the decree. MUTHIA CHETTI *v.* ORR.

[20 Mad. 224

The Judges differing in opinion the case was referred under s. 575 of the Code to COLLINS, C. J., who agreed with the decision of SHEPHARD, J.

10.—*Position and power of receiver—Agreements entered into with one party to a suit—Contempt of Court—Attorney, Improper conduct of.*] A receiver appointed by the Court entered into two private agreements, one prior to, the other subsequent to, the date of his appointment, with one of the defendants in the suit, restricting and controlling his powers. Neither agreement was at any time brought to the notice of the Court:—*Held*, this was a gross contempt of Court, for which the parties were liable to committal. A receiver is a servant of the Court, and has only such power and authority as the Court may choose to give him. MANICK LALL SEAL *v.* SURBUT COOMAREE DASSEE.

[22 Calc. 648

RECOGNIZANCE TO KEEP PEACE.

1.—*Criminal Procedure Code* (1882), *s.* 107 — *Jurisdiction of Magistrate—Temporary residence of offender.*] In a case where an accused was bound over to keep the peace by the Deputy Magistrate of the district in which the accused was temporarily residing at the time when the Magistrate received information and instituted proceedings against him:—*Held*, that although

RECOGNIZANCE TO KEEP PEACE—*concluded.*

the accused permanently or habitually resided in another jurisdiction, he was sufficiently within the jurisdiction of the Magistrate within the meaning of s. 107 of the Criminal Procedure Code. SHAMA CHARAN CHAKRAVARTI *v.* KATU MUNDAL.

[24 Calc. 344

2.—*Criminal Procedure Code* (1882), *s.* 106—*Magistrate, Jurisdiction of—Procedure to be followed by Magistrate trying a case when he is not empowered to bind the accused down under s.* 106 *of the Criminal Procedure Code.*] An Honorary Magistrate exercising third class powers tried an accused on a charge of criminal trespass and convicted and sentenced him to pay a fine of Rs. 10, or in default to suffer seven days' rigorous imprisonment. He further submitted the case to the District Magistrate with a recommendation that the accused should be bound down to keep the peace under s. 106 of the Criminal Procedure Code, and the District Magistrate ordered the accused to furnish security:—*Held*, that the order of the District Magistrate was illegal and must be set aside. Before an order under s. 106 can be properly passed, the conviction must be by a Magistrate of the class mentioned in the section and not by a third class Magistrate, and the order must be passed by the Magistrate who convicts and passes the sentence. MAHMUDI SHEIKH *v.* AJI SHEIKH.

[21 Calc. 622

3.—*Criminal Procedure Code* (1882), *s.* 106—*Magistrate acting as Appellate Court — Power to require security to keep the peace.*] The Magistrate of a district acting as an Appellate Court in criminal cases cannot make an order under s. 106 of the Code of Criminal Procedure. *Ashu v. Queen-Empress*, I. L. R. 16 Calc. 779; *Queen-Empress* v. *Lachman*, Weekly Notes, All. (1890), 201, referred to. QUEEN-EMPRESS *v.* ISHRI.

[17 All. 67

RECORD.

——, Entry in.

See CASES UNDER KHOTI SETTLEMENT ACT.

RECORD, PREPARATION OF, FOR APPEAL.

See PRIVY COUNCIL, PRACTICE OF—RECORD, PREPARATION OF.

[20 Mad. 395
[L. R. 24 I. A. 194

RECORD OF RIGHTS.

See BENGAL TENANCY ACT, S. 101.

[21 Calc. 378

See BENGAL TENANCY ACT, S. 102.

[21 Calc. 38

RECORD OF RIGHTS—*concluded.*

See BENGAL TENANCY ACT, s. 108.
[21 Calc. 521

See PRE-EMPTION—RIGHT OF PRE-EMPTION.
[17 All. 226

——, **Dispute as to entries in.**

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[21 Calc. 776
[22 Calc. 477
[24 Calc. 462

RECORDER OF RANGOON.

——, **Court of.**

See SANCTION FOR PROSECUTION.
[22 Calc. 487

——, **Decree of, Appeal from.**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.
[24 Calc. 30

REDEMPTION.

See EQUITY OF REDEMPTION.

See CASES UNDER MORTGAGE—REDEMPTION.

——, **Decree for**

See DECREE—FORM OF DECREE—MORTGAGE.
[20 Bom. 196

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 15B.
[19 Bom. 318

See TRANSFER OF PROPERTY ACT, s. 93.
[20 Bom. 279

——, **Effect of.**

See HINDU LAW—MAINTENANCE—FORM OF ALLOWANCE, AND CALCULATION OF AMOUNT.
[21 Bom. 747

——, **Evidence of.**

See REGISTRATION ACT, s. 49.
[19 Bom. 36

——, **Right of.**

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE.
[19 Mad. 249
[L. R. 23 I. A. 32

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 22.
[18 Bom. 739

REDEMPTION—*continued.*

See ESTOPPEL — ESTOPPEL BY JUDGMENT.
[17 Mad. 17

See LIMITATION ACT, s. 19 — ACKNOWLEDGMENT OF OTHER RIGHTS.
[18 All. 458

See LIMITATION ACT, s. 20.
[18 All. 295

See MAHOMEDAN LAW—DEBTS.
[20 Bom. 338

See MORTGAGE—ACCOUNTS.
[20 Mad. 120

See MORTGAGE — REDEMPTION — REDEMPTION OF PORTION OF PROPERTY.
[20 Mad. 295

See CASES UNDER MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[20 Bom. 390

See MORTGAGE—SALE OF MORTGAGED PROPERTY — RIGHTS OF MORTGAGEES.
[21 Bom. 619

See PARTIES — PARTIES TO SUITS — MORTGAGES, SUITS CONCERNING.
[21 Calc. 116

See SALE IN EXECUTION OF DECREE — INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.
[19 Bom. 276
[21 Bom. 424

See SERVICE TENURE.
[18 Bom. 22

See VARIANCE BETWEEN PLEADING AND PROOF.
[18 Mad. 462

——, **Suit for.**

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 13.
[19 Bom. 553

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 15D.
[20 Bom. 469

See HINDU LAW—USURY.
[18 Bom. 227

See LIMITATION ACT, ART. 134.
[18 Bom. 387
[19 Bom. 140

See LIMITATION ACT, ART. 148.
[21 Bom. 793

REDEMPTION—*concluded.*

See MORTGAGE — REDEMPTION—RIGHT OF REDEMPTION.

[19 All. 202

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[20 Mad. 82

See RES JUDICATA—CAUSE OF ACTION.

[17 Mad. 96
[19 All. 202

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS.

[16 All. 464

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

See VALUATION OF SUIT—SUITS.

[19 Mad. 16

See VARIANCE BETWEEN PLEADING AND PROOF.

[18 All. 403

REFERENCE TO HIGH COURT—CIVIL CASES.

See PRACTICE — CIVIL CASES — REFERENCE TO HIGH COURT.

[21 Bom. 806

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE —REFERENCE TO HIGH COURT.

[20 Bom. 779
[20 Mad. 358

REFERENCE TO HIGH COURT—CRIMINAL CASES.

1.—*Criminal Procedure Code* (1882), *s.* 438 —*Power of the District Magistrate to question the propriety of finding and sentence by the Sessions Judge—Criminal Procedure Code, ss.* 435 *and* 439.] The power conferred by s. 438 read with s. 435 of the Criminal Procedure Code upon a District Magistrate to make a reference to the High Court refers clearly to a "proceeding before any inferior Criminal Court." By the words "or otherwise" in s. 438 the Legislature never intended to give to a Magistrate the power to question the propriety of a judgment or sentence by a superior criminal authority; nor by the use of the words "or which has been reported for orders" in s. 439 could it have been intended that such report might be made by an inferior criminal authority with respect to a proceeding by a superior authority. QUEEN-EMPRESS *v.* KARAMDI.

[23 Calc. 250

2.—*Criminal Procedure Code* (1882), *s.* 438 —*Power of the District Magistrate to refer to the High Court a case in which the Sessions Court has, under s.* 123, *refused to confirm his order under s.* 118 *of the Code.*] Section 438 of the Criminal Procedure Code does not authorise the District Magistrate to refer to the High Court a case in which the Sessions Court has, under s. 123 of the Code, refused to confirm his order under s. 118. If the District Magistrate, as the officer responsible for the peace of his district, is dissatisfied with any such order, his proper course is to ask the public prosecutor to move the High Court for the revision of the same. QUEEN-EMPRESS *v.* JAHANDI.

[23 Calc. 249

REGISTER.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[22 Calc. 112

REGISTRAR OF HIGH COURT.

——, Report of.

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR.

[24 Calc. 437

——, Report of, Confirmation of.

See HINDU LAW—USURY.

[23 Calc. 899

——, Sale by.

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[21 Calc. 566

REGISTRATION.

See MORTGAGE—MARSHALLING.

[23 Calc. 790

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[20 Bom. 290

See TRANSFER OF PROPERTY ACT, S. 53.

[22 Calc. 185

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[17 Mad. 146

—— of deed.

See GIFT.

[19 Mad. 433

See CASES UNDER REGISTRATION ACT.

—— of name, Right to.

See LIMITATION ACT, ART. 144 — IMMOVEABLE PROPERTY.

[19 Bom. 43

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[24 Calc. 642

REGISTRATION—*concluded.*

——, Suit to enforce.

See LIMITATION ACT, s. 7.

[18 Mad. 99

See REGISTRATION ACT, s. 77.

[18 Mad. 99

REGISTRATION ACT (XIX OF 1843).

——, s. 2.

See REGISTRATION ACT, 1877, s. 50.

[18 Bom. 332

REGISTRATION ACT (XX OF 1866).

See REGISTRATION ACT, 1877, s. 17.

[18 Bom. 92

REGISTRATION ACT (III OF 1877).

——, s. 3.

See s. 17.

[20 Mad. 58

[21 Bom. 387

——, s. 17.

See s. 49.

[18 Bom. 13

See TRANSFER OF PROPERTY ACT, s. 107.

[22 Calc. 752

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[22 Calc. 179

1.—s. 17, cl. (d).—*Lease for one year at a rental of more than Rs.* 100—*Evidence—Transfer of Property Act* (*IV of* 1882), *ss.* 4 *and* 107.] The owner of certain land exchanged it for certain other land, but took a lease for one year of the former land and paid the rent thereof, and received and retained the rents of the land he has acquired by the exchange:—*Held* in a suit for recovery of possession on the expiry of the lease, that the fact that such a lease recites the fact of the exchange of the lands does not evidence the exchange, and as such create a title in land. Nor does the fact that the rent reserved under the lease is more than Rs. 200 create an interest in land of Rs. 100 and more in value, so as to necessitate registration of the lease under s. 17 of the Registration Act. Such a lease falls under s. 107 of the Transfer of Property Act, the provisions of which section are, by s. 4 of the Act, supplemental to the Registration Act. SEETHARAMA RAJU *v.* BAYANNA PANTULU.

[17 Mad. 275

2.—s. 17—*Lease for life of the lessee.*] A lease of immoveable property for the life of the lessee is a lease for a term exceeding one year. It therefore requires registration. PARSHOTAM VISHNU *v.* NANA PRAYAG.

[18 Bom. 109

REGISTRATION ACT (III OF 1877)—*continued.*

3.—s. 17.—*Operation of section — Document not registrable under Registration Act* (*XX of* 1866), *but requiring registration under Act III of* 1877—*Immoveable property—Hereditary allowance attached to office of desai—Deed of gift of such property.*] Section 17 of the Registration Act, III of 1877, should not be construed as requiring a document to be registered which would not have required registration when it was executed. *Raju Balu* v. *Krishnara*, I. L. R. 2 Bom. 273, distinguished. An instrument which did not require registration under Act XX of 1866 is not inadmissible in evidence by reason of Act III of 1877. Dues incidental to an office such as that of a *desai*, which is capable of being held by a person other than a Hindu, were not immoveable property when Registration Act XX of 1866 was enacted. DESAI MOTILAL MANGALJI *v.* DESAI PARASHOTAM NANDLAL.

[18 Bom. 92

4.—s. 17, cl. (h).—*Document giving right to call for other instrument—Contract for sale of immoveable property—Vendor and purchaser.*] A contract for the sale of immoveable property recited that, on the date thereof, Rs. 100 had been received as earnest-money, and provided that within two months the vendor would execute a proper conveyance, and thereupon receive the balance of the purchase-money and give up possession:—*Held*, that the document did not pass any right, title, or interest, in the property to the purchaser, but merely gave him a right against the vendor personally to call for a conveyance and possession on paying the balance of the purchase-money. HORMASJI MANEKJI DADACHANJI *v.* KESHAV PURSHOTAM.

[18 Bom. 13

5.—s. 17, cl. (h).—*Document creating a right to obtain another document—Agreement to sell equity of redemption.*] By an unregistered writing, dated the 17th April, 1889, *A* agreed to sell to *B* certain landed property on his (*B's*) paying off the mortgage-debt due upon it and a further sum of Rs. 1,500. The agreement also stated that *B* had on that day paid *A* the Rs. 1,500, and might pay off the mortgage-debt at any time he liked, and that *A* would execute a valid deed of sale. In a suit brought by *A* upon the agreement, the lower Court held that the agreement was an assignment of the equity of redemption and required registration, and that being unregistered, the plaintiff's claim based on it could not be maintained. On second appeal—*Held*, following *Chunilal Panalal* v. *Bomanji*, I. L. R. 7 Bom. 310, that the agreement did not require registration. SHRIDHAR BALLAL KELKAR *v.* CHINTAMAN SADASHIV MEHENDALE.

[18 Bom. 396

6.—s. 17.—*Document registered under the Dekhan Agriculturists Relief Act* (*XVII of* 1879), *ss.* 56 *and* 60—*Deed of release by adopted son.*] The plaintiff was adopted in 1880 by *K*,

REGISTRATION ACT (III OF 1877)— *continued.*

the widow of one *G*. In June, 1885, he executed a document which recited that he and *K* had not been on amicable terms, and that his adoption had consequently been cancelled, and that she had adopted another son (defendant No. 1) to whom she had given all rights of heirship, and declared that in consideration of Rs. 200 paid by *K*, he delivered back to her the rights which he had obtained by virtue of his adoption and heirship. This document was not registered under the General Registration Act (III of 1877), but was registered under s. 56 of the Dekhan Agriculturists Relief Act (XVII of 1879), which section applied to the district in which the transaction took place. *K* died in October, 1885, and the plaintiff brought this suit, as adopted son, to recover the property of *G*. The first defendant, who had been adopted by *K* subsequently to the plaintiff's adoption, contended that he had been validly adopted, and that he was entitled to the property. He relied (*inter alia*) upon the release executed by plaintiff in June, 1885. It was contended that the release in question was not admissible in evidence, not having been registered under the General Registration Act (III of 1877):—*Held* that the document was admissible. It was a conveyance within s. 56 of the Dekhan Agriculturists Relief Act (XVII of 1879), and the law in force as to its registration was contained in ss. 56 and 60 of that Act. MAHADU GANU *v.* BAYAJI SIDU.

[19 Bom. 239

7.—s. 17.—*Deed of assignment showing payment of rent as interest—Admissibility of deed in evidence—Limitation Act (XV of 1877), s. 20 — Payment of interest as such — Mortgage — Payment of rents to mortgagee in lieu of interest on debt.*] By a bond, dated the 15th July, 1872, *A* assigned to *B* the "*vahivat* of assessment" of certain lands belonging to him as security for a loan of Rs. 10,000. The bond provided that *B* should receive the assessment, and after making certain payments should retain the balance in lieu of interest until the principal debt should be repaid. The bond was not registered. The assessment was duly received by *B* until April, 1887. In February, 1890, *B* filed this suit to recover the principal sum from *A* personally, relinquishing his claim against the land, as the bond was not registered. A pleaded limitation, *B* contended that the receipt of the assessment in lieu of interest was a payment of "interest as such" within the meaning of s. 20 of the Limitation Act (XV of 1877), and that the last of such payments having been made within three years before suit, his claim was not barred:—*Held*, that the assignment of the "*vahivat* of assessment" contained in the bond was an assignment of a benefit arising out of immoveable property within the meaning of ss. 17 and 3 of the Registration Act (III of 1877), or else a mortgage; and in either case the bond could not be admitted in evidence, as it was not registered. But it was only by reading the terms of the bond that the Court could gather that the assessment

REGISTRATION ACT (III OF 1877)— *continued.*

was to be received in lieu of interest. This would be to admit indirectly the provisions of the bond in evidence. Apart from the bond there was no evidence that the plaintiff (*B*) had been paid "interest as such" within three years of the filing of the suit by the duly authorised agents of the defendants, and the claim was therefore barred. VENKAJI BABAJI NAIK *v.* SHIDRAMAPA BALAPA DESAI.

[19 Bom. 663

8.—s. 17, cls. (b) and (h).—*Instrument creating a charge in the nature of a mortgage—Admissibility in evidence of documents compulsorily registrable but unregistered.*] A *kararnama* (agreement), dated 11th day of June, 1885, was passed by *A* to *B* to the following effect:—"As my father *S* is dead, it has been arranged that I should succeed to his estate . . . . . Part of this estate at Vagoda, consisting of a house, fields, cattle and a cart, has been given into your possession for use and enjoyment. The reason thereof is that you have undertaken to pay Rs. 450 found due on an adjustment of *khata* from my father to *G*. I am unable to pay off this debt; and so you have been put into possession of this property. I shall pass to you a sale-deed in respect of this property, and shall transfer the fields to your name from the year 1888-89":—*Held*, that the *kararnama* required registration. It did not fall within the exception provided for by cl. (*h*) of s. 17 of the Registration Act (III of 1877). It was not a document which merely created a right to demand another document. It created as between the parties to it a charge in the nature of a mortgage. The document of itself declared a right, and the mention of an intention to execute a deed of sale made no difference. An unregistered mortgage-bond for one hundred rupees and upwards may be admissible in evidence to prove the simple debt or a personal obligation, but it is inadmissible in evidence to prove any right to the property affected by it. VANI *v.* BANI.

[20 Bom. 553

9.—s. 17, cl. (b)—*Statement in will—Words not purporting or operating to extinguish an interest in the present or in future—Evidence Act (I of 1872), s. 32, cl. (6).*] Section 17, cl. (*b*) of the Registration Act (III of 1877) does not render a passage in a will inadmissible in evidence if the words of it do not purport or operate to extinguish an interest in the present or in future, but state only past facts. Such a statement would, if proved, be admissible also under s. 32, cl. (6) of the Indian Evidence Act (I of 1872). CHAMANBU JAVJE MAHOMED ALI BOHORI *v.* MULTANCHAND SHIVRAM.

[20 Bom. 562

10.—s. 17.—*Agreement to prevent acquisition of easement—Document not creating, &c, right in immoveable property—Chance of acquiring easement—Immoveable property.*] The chance of ac-

REGISTRATION ACT (III OF 1877)—*continued.*

quiring a right to light and air is not immoveable property within the meaning of the Registration Act, nor can a pecuniary value be put upon it. A document therefore which limits or extinguishes the chance of acquiring such an easement does not require registration. SULTAN NAWAZ JUNG *v.* RUSTOMJI NANABHOY.

[20 Bom. 704

11.—s. 17.—*Deed of assignment of a decree—Admissibility in evidence—Registration Act, s.* 49.] Section 17 (*b*) of the Registration Act (III of 1877) does not apply to a *kabala* or deed of assignment of a decree, and an unregistered *kabala* of a decree dealing with immoveable property of more than Rs. 100 in value is not inadmissible in evidence under s. 49 of that Act. *Gopal Narayan* v. *Trimbak Sadashiv*, I. L. R. 1 Bom. 267, dissented from; *Jiwan Ali Beg* v. *Basa Mal*, I. L. R. 9 All. 108, referred to. GOUS MAHOMED *v.* KHAWAS ALI KHAN.

[23 Calc. 450

12.—s. 17, cl. (n) and s. 18.—*Receipt not affecting mortgage debt.*] Although under the Registration Act (III of 1873), s. 17, cl. (*n*), a receipt given by a mortgagee purporting to extinguish the mortgage debt does require registration:—*Held*, that the language of the receipt in the present case did not indicate any intention to extinguish or limit the mortgagor's interest, and that therefore registration was unnecessary. UPPALAKANDI KUNHI KUTTI ALI HAJI *v.* KUNNAM MITHAL KOTTAPRATH ABDUL RAHIMAN.

[19 Mad. 288

13.—s. 17, cl. (n).—*Receipt purporting to extinguish mortgage—Receipt only covering interest of one co-mortgagee.*] The provisions of s. 17, cl. (*n*) of Act III of 1877 do not apply to a receipt which purports to extinguish not the entire mortgage but only the rights under the mortgage of one of the co-mortgagees. SRI RAM *v.* KESRI MAL.

[18 All. 338

14.—s. 17, cls. (c) and (h).—*Receipt for purchase-money—Document creating or extinguishing a right to immoveable property.*] The plaintiffs sued to recover the property sold to them by the defendants. The defendants set up a re-purchase and produced a receipt passed to them by the plaintiffs which stated that the plaintiffs had no longer any interest in the property, and that they would execute a new sale-deed. The plaintiffs contended that the receipt required registration:—*Held*, that as the receipt created or declared or extinguished a right to the property, with a superadded covenant to execute a stamped document to the same effect on a future occasion, it required registration. PARASHRAM *v.* GANPAT.

[21 Bom. 533

15.—s. 17.—*Deed of relinquishment by tenant to land-holder in consideration of waiver of right to arrears of rent.*] An instrument by which a tenant in a zemindari, in consideration of the zemindar waiving his right to arrears of rent accrued due, relinquishes the land to him, is not admissible in evidence, unless it is registered in accordance with law, although it may have been drawn up and delivered to the servants of the zemindar before he had signified his consent to waive his right to the arrears. RANGAYYA APPA RAU *v.* KAMESWARA RAU.

[20 Mad. 367

16.—s. 17 (c) and s. 49.—*Agreement to renew a kanom and to credit as renewal fees a sum of money then due by plaintiff to defendant—Portion of agreement severable from rest—Admissibility in evidence of portion though unregistered.*] A written agreement to renew a *kanom* and to credit as renewal fees a sum of money then due is not an acknowledgment of money paid for the creation of an interest in land within the meaning of s. 17 (*c*) of the Registration Act, and therefore is admissible in evidence though unregistered:—*Held*, that in such an agreement, the agreement to renew is severable from the rest of the agreement, and the document, though unregistered, is admissible in evidence of the agreement to renew even if it were inadmissible for other purposes. KRISHNAN NAMBUDRI *v.* RAMAN MENON.

[20 Mad. 484

17.—s. 17 (d).—*Interest in immoveable property—Registration Act, s.* 3—*Document giving right to "cut and enjoy trees"—Lease—Specific Relief Act (I of 1877), s.* 36—*Injunction.*] The plaintiff (who held on lease a share in a village and in the trees standing in the village tank), in consideration of Rs. 200 and a promissory note for Rs. 3,200, executed in favour of the defendant a document by which he assigned to the latter the right "to cut and enjoy the trees, &c.," for a period of four years from its date. The instrument was not registered. The defendant felled the trees which were mature at the date of the instrument, and subsequently felled others since matured. The plaintiff now sued for a declaration of his title to the remaining trees and for an injunction to restrain the defendant from intermeddling therewith, alleging that he had sold to the defendant orally the right to fell only such trees as were then matured:—*Held*, that the unregistered instrument purported to convey an interest in immoveable property, and was not a lease and was inadmissible in evidence: and that the plaintiff was not entitled to relief by way of injunction or otherwise. SEENI CHETTIAR *v.* SANTHANATHAN CHETTIAR.

[20 Mad. 58

18.—s. 17.—*Document providing for payment of hereditary allowance—Interest in immoveable property—Registration Act (III of 1877), s.* 3—*Bombay General Clauses Act (Bombay Act III of 1886).*] Plaintiffs sued in the Court of Small

REGISTRATION ACT (III OF 1877)— *continued.*

Causes at Poona to recover Rs. 400 for arrears alleged to be payable to them under an agreement by the defendant's father to pay Rs. 150 per annum, of which Rs. 50 were for maintenance of plaintiffs' mother, and the residue was to be applied towards defraying the expenses of a temple. The terms of the agreement showed that it was intended that the payment for the expenses of the temple should be continued in perpetuity. The Judge dismissed the suit, holding that being for a hereditary allowance it was a claim for immoveable property and came within the meaning of ss. 3 and 17 of the Registration Act, and that the document creating it required registration, and not being registered, was inadmissible in evidence. On application by the plaintiffs to the High Court under s. 25 of the Provincial Small Cause Courts Act (IX of 1887) :—*Held*, reversing the decree, that the document did not require registration, as it was not an instrument purporting or operating to create or declare an interest in immoveable property within the meaning of s. 17, or create an hereditary allowance in the sense in which that expression is used in s. 3 of the Registration Act VISHNU GANESH JOSHI *v.* YESHVANTRAO.

[21 Bom. 387

19.—s. 17.—*Change of name in Government records—Mortgage or conditional sale—Subsequent agreement to re-transfer land in Government records on payment of debt—Document creating a right in land.*] In 1877, the plaintiff being indebted to the defendant transferred certain land to the defendant's name in the Government records. In July, 1879, the defendant executed the following document to the plaintiff reciting the previous transfer and agreeing to retransfer the land to the plaintiff's name on the 12th July, 1880, if the debt which would then be due should be paid off:—"In the village of Berhampur is your (plaintiff's) field, Survey No. 146, measuring 5 acres 3 *gunthas*, bearing assessment Rs. 16. You (plaintiff) have got it transferred to our name. That field therefore stands in our (defendant's) name in the Government records. You owe a debt to us. On account of that debt you have transferred it to our name. * * * * The field shall be retransferred to your name when you repay the said debt to me. You have cultivated the field for the produce of Samvat 1936, and a lease in respect thereof you have this day passed to me. And a stamp paper was purchased at the time of the transfer for the execution of this agreement, but no agreement was then passed. This agreement is therefore this day passed to you when the lease is executed. And you owe me (a) debt bearing interest. I will pay out of my pocket the expenses to be incurred at present in cultivating the field. The debt due to me would in all amount to Rs. 100. If you repay all these rupees due to me till the Vaishakh Shudh 6th, Samvat 1936, I will take them and retransfer the field to your name. And if you fail to pay (them) till Vaishakh Shudh 4th, you will have no claim whatever to the said field.

REGISTRATION ACT (III OF 1877)— *continued.*

I shall not take the rupees after the 4th (chauth), nor shall I give (or transfer) the field to you. . . . . , I shall lease the field to any one I like without keeping any claim of you as regards cultivation, manure and hedge. You have no claim or right whatever. . . . . ." This document was not registered. The plaintiff brought this suit to redeem the land, alleging that it had been mortgaged to the defendant, and that the debt had been paid off. The defendant contended that the transaction in 1877 was not a mortgage but a sale of the land to him, and that the document of July, 1879, was an agreement to resell it to the plaintiff, which was not admissible in evidence as it was not registered:—*Held*, that the document of the 11th July, 1879, did not require registration. It created no rights in land, but only amounted to a personal covenant to effect a mutation of names in the Government books when the debt due by the plaintiff was satisfied. PATEL RANCHOD MORAR *v.* BHIKABHAI DEVIDAS.

[21 Bom. 704

———, s. 18.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[22 Calc. 179

1.—s. 18.—*Transfer of Property Act (IV of 1882), ss. 8 and 54—Assignment of debts secured on land—Unregistered instrument of assignment.*] In 1879, the defendants executed a hypothecation-deed, which was registered to secure the repayment with interest of a loan of Rs. 87. In 1884, the obligee transferred his rights to the plaintiff, in consideration of Rs. 70, under an instrument which was not registered. At the date of the transfer the debt amounted with interest to Rs. 137. The plaintiff now sued to recover Rs. 129 being the principal and interest due on the hypothecation-bond at the date of suit:—*Held*, that registration of the deed of transfer was not compulsory, and the plaintiff was not precluded from proving the instrument of transfer and establishing his rights thereunder to a personal decree and to a charge on the land by reason of its not having been registered. *Satra Kumaji* v. *Visram Hasgavda*, I. L. R. 2 Bom. 97, referred to. SUBRAMANIAM *v.* PERUMAL REDDI.

[18 Mad. 454

2.—s. 18.—*Subsequent written agreement to abate rent—Variation of lease—Transfer of Property Act (IV of 1882), s. 107—Form of decree.*] In the year 1879 the plaintiff granted a lease of certain land to the father of the defendants. In May, 1889, he agreed in writing to allow the defendants an abatement of rent to the extent of Rs. 100 per annum. This agreement was not registered, but was stated in the plaint in a previous suit brought by the plaintiff. He subsequently brought a suit against the defendants for the recovery of the entire amount of the original rent:—*Held*, that the agreement did

REGISTRATION ACT (III OF 1877)—*continued.*

not operate as a lease, but was merely a variation of the lease, and that therefore registration was not necessary:—*Held*, therefore, varying the order of the District Judge, that the decree for the entire amount of the original rent must be set aside, and a decree made for the amount of rent due at the reduced rate. SATYESH CHUNDER SIRCAR *v.* DHUNPUL SINGH.

[24 Calc. 20

———, s. 21.—*Defective description of property—Deed affecting land registered in wrong book—Suit by purchaser for value.*] In a suit for land, forming part of the self-acquired property of a deceased Hindu, it appeared that in 1885 his widow and his cousin had (on the death without issue of his son) entered into an agreement whereby the latter relinquished in the widow's favour for consideration all his rights in the self-acquired property left by her husband. The agreement was registered in book No. 4 under the Registration Act, 1877, and it contained no such description of the property as to satisfy the requirements of s. 21. The plaintiff afterwards purchased the land now in question from the cousin; the defendants Nos. 1 and 2 having purchased it and obtained possession from the widow:—*Held* that the plaintiff was entitled to recover. NARASAMMA *v.* SUBBARAYUDU.

[18 Mad. 364

———, s. 24.

See s. 77.

[21 Bom. 69, 699, 724

———, s. 34.

See s. 77.

[21 Bom. 724

1.—s. 35.—*Registration of will after death of testator—Inquiry by registering officer into disability of testator—Registration Act (III of 1877), ss. 40 and 41.*] The procedure prescribed by s. 35 of the Indian Registration Act is not applicable to the registration of wills which, under s. 40 of that Act, are presented for registration after the death of the testator by persons claiming under them. ARUMUGAM PILLAI *v.* ARUNACHALLAM PILLAI.

[20 Mad. 254

2.—s. 35.—*Registration of bond executed by minor—Concealment from Registrar of fact of executant being a minor—Fraud—Contract Act (IX of 1872), s. 17.*] A sum of money was advanced by the plaintiff to a minor, who executed a bond in respect of the loan, and registered it. Registration was effected in the ordinary way; the parties appearing before the Registrar and the minor admitting execution of the bond, which was then registered:—*Held*, in a suit on the bond, that there being nothing to show that the minor *appeared* to be such to the Registrar at the time of registration so as to enable the Registrar to refuse registration under s. 35 of the Registration Act, and the concealment of the fact of the executant's minority both by himself and by the plaintiff from the Registrar not amounting to fraud (see s. 17 of the Contract Act), so as to invalidate the registration-procedings as against the minor, the Registrar had in no way violated the law relating to the registration of documents, and the bond must be taken to have been duly registered. SHAM CHARAN MAL *v.* CHOWDHRY DEBYA SINGH PAHRAJ.

[21 Calc. 872

———, ss. 40 and 41.

See s. 35.

[20 Mad. 254

———, s. 47.

See s. 50.

[20 Bom. 158

———, s. 49.

See s. 17.

[23 Calc. 450
[20 Mad. 484

1.—s. 49.—*Suit for damages for breach of contract to execute a lease—Admissibility in evidence of an unregistered kabuliat to prove contract.*] Defendant entered into an agreement with the plaintiff to lease a certain property to him. The plaintiff delivered the *kabuliat* to the defendant and was put into possession of the property. The defendant did not execute the *cowle* and did not register the *kabuliat*, and subsequently improperly deprived the plaintiff of his possession. Plaintiff brought a suit for damages for breach of contract:—*Held*, on a question as to whether the *kabuliat* was admissible in evidence, having regard to s. 49 of Act III of 1877, since it had not been registered, that, since the plaintiff's action was not founded on an alleged title under a lease granted by the defendant, but was an action for damages for breach of the contract to execute the lease, the *kabuliat* was admissible in evidence to prove the contract. *Hurjivan Virji* v. *Jamsetji Nowroji*, I. L. R. 9 Bom. 63, distinguished. RAJAH OF VENKATAGIRI *v.* NARAYANA REDDI.

[17 Mad. 456

2.—s. 49.—*Unregistered contract for sale of land subsequently attached in execution—Evidence of transfer of ownership in property.*] In execution of a decree against *S* and *P* property was attached on the 11th February, 1891, and sold by auction to the plaintiff in July, 1892. The defendants, however, alleged that at the date of attachment the property did not belong to *S* and *P*, as they had sold it to them (the defendants) on the 22nd January, 1891, under a contract of sale of that date. Their contract had not been registered:—*Held*, that by cl. (*b*) of s. 17 of the Indian Registration Act (III of 1877) the contract needed registration if it was intended that it should affect the land (s. 49). Not being registered, it did not operate to

REGISTRATION ACT (III OF 1877)— *continued.*

transfer the ownership, and could not be received in evidence of any transaction affecting the land, *i.e.*, it could not be used to show that the ownership had passed from the vendor to the purchaser. The property in question was therefore at the date of attachment, the property of *S* and *P*, and under the attachment and sale in execution it passed to the plaintiff. HORMASJI MANEKJI DADACHANJI *v.* KESHAV PURSHOTAM.

[18 Bom. 13

3.—s. 49.—*Lease—Agreement to indemnify contained in lease—Suit for indemnity.*] A lease of land for nine years contained a clause by which the lessor agreed to indemnify the lessee in case he should incur any loss in consequence of disputes which might arise as to the land between the lessor and his kinsmen. The lease was not registered. After the lessee had held the land under the lease for two years, a suit for possession was brought against him, and the lessor and he were dispossessed and obliged to pay mesne profits. He then brought this suit against the lessor under the above clause in the lease:—*Held*, that the lease being unregistered was not admissible in evidence and could not be looked at. The clause on which the plaintiff sued could not be separated from the lease itself, and the plaintiff's claim must therefore be rejected. GURUNATH SHRINIVAS DESAI *v.* CHENBASAPPA.

[18 Bom. 745

4.—s. 49.—*Notice of attornment on redemption of mortgage—Evidence of attornment but not of satisfaction of mortgage-debt.*] Where on the redemption of a mortgage the mortgagee executed a document which purported to be a notice of attornment to the tenants in occupation of the mortgaged property, containing a recital that the property had been redeemed:—*Held*, that the document, though unregistered, was admissible in evidence for its own proper purpose of proving the attornment, though not for the purpose of proving that the mortgage charge was satisfied. ANTAJI *v.* DATTAJI.

[19 Bom. 36

1.—s. 50.—*Priority of deeds—Unregistered documents executed before the Registrasion Act (XVI of 1864).*] Registration under Act III of 1877 does not operate so as to exclude instruments executed before Act XX of 1864 came into operation on the ground of their non-registration. *Tirumala* v. *Lakshmi*, I. L. R. 2 Mad. 147, referred to and followed. DESAI LALLUBHAI JETHABHAI *v.* MUNDAS KUBERDAS.

[20 Bom. 390

2.—s. 50.—*Bombay Regulation IX of 1827, s. 6—Registration Act (XIX of 1843), s. 2—Priority of deeds—Unregistered mortgage with possession and without notice—Mortgage earlier in date, but subsequently registered—Possession—Hindu law.*] The plaintiff sued to enforce a mortgage, dated the 8th June, 1863, which was registered on the 15th September, 1864, but was unaccompanied with possession. The defendant relied on a mortgage of the same property, dated the 9th May, 1864. This mortgage was unregistered, but was accompanied with possession:—*Held*, that, apart from any special peculiarities of Hindu law, the plaintiff's mortgage of the 8th June, 1863, which was registered on the 15th September, 1864, was entitled to priority over the unregistered mortgage of the 9th May, 1864, although the latter was without notice of the earlier mortgage and was accompanied with possession:—*Held*, also, that plaintiff's mortgage was not invalid under Hindu law owing to its not being accompanied with possession. TRIKAM MADHAV SHET *v.* HIRJI HARJIVAN SHET.

[18 Bom. 332

3.—s. 50.—*Priority of deeds—Purchaser under an unregistered deed—Lease of the land by purchaser to the vendor—Decree for rent obtained by the purchaser against the vender—Effect of such decree on purchaser's title in competition with the title of subsequent purchaser under a registered deed.*] On the 7th August, 1876, the defendant purchased the property in dispute under an unregistered sale-deed. On the same day he leased it to his vendor. In 1878, he obtained a decree for rent against his vendor. On the 23rd May, 1881, the plaintiff purchased the same property from the same vendor under a registered deed of sale. In 1883, the plaintiff sued the defendant to establish his right to the property and to recover possession:—*Held*, that the plaintiff was entitled to a decree, his registered deed taking priority to the prior unregistered deed of the defendant. Section 50 of the Registration Act (III of 1877) did not give the defendant priority in virtue of the decree which he obtained in the rent-suit, for in that suit the defendant's ownership was not in dispute, and the decree merely adjudicated as to the relationship between the defendant and his vendors created subsequently to the sale. The defendant's title as owner was not merged in the decree, but still rested exclusively on his deed of sale. *Kolluri Nagabhashanum* v. *Ammanna*, I. L. R. 3 Mad. 71; and *Madar Saheb* v. *Subbarayalu*, I. L. R. 6 Mad. 88, distinguished. KESHAV PANDURANG *v.* VINAYAK HARI.

[18 Bom. 355

4.—s. 50.—*Mortgage—Priority—Registration—Notice—Possession of title-deeds—Mortgagor allowed by first mortgagee to retain title-deeds—Subsequent mortgage to second mortgagee and transfer of title-deeds.*] *A* mortgaged land to *B* by a mortgage duly registered. *A* subsequently got back the title-deeds and handed them to *C*, to whom he mortgaged the same property. *B* sued *C* (the second mortgagee) for a declaration of priority. The lower Court found that *B* had not been guily of fraud or negligence in parting with the title-deeds:—*Held* that *B*, as first mortgagee, was entitled to priority. The registration of his mortgage was noticed to *C*, and there was no misrepresentation by *B* which

REGISTRATION ACT (III OF 1877)—*continued.*

would relieve *C*, as subsequent mortgagee, of the duty of inquiry, or destroy the effect of such constructive notice. BALMAKUNDAS ATMARAM *v.* MOTI NARAYAN.

[18 Bom. 444

5.—s. 50.—*Transfer of Property Act (IV of 1882), ss. 3 and 85—Notice—Effect of registration of subsequent incumbrance.*] For the purposes of s. 85 of the Transfer of Property Act, a mortgagee will be deemed to have notice of a subsequent registered incumbrance affecting the property mortgaged to him, inasmuch as it is the duty of such prior mortgagee before suing on his mortgage to search the registry for record of any such subsequent incumbrance, and if he has not done so, he must be taken either to have wilfully abstained from inquiry or search which he ought to have made within the meaning of s. 3 of the abovementioned Act, or have omitted to do an act which a reasonably prudent mortgagee about to bring a suit on his mortgage under Chap. IV of Act IV of 1882 ought to have done, and would have done, which act, inquiry or search would have resulted in the disclosure of the existence of the subsequent incumbrance. JANKI PRASAD *v.* KISHEN DAT.

[16 All. 478

6.—s. 50.—*Priority of registered over unregistered mortgage—San-mortgage optionally registrable, but not registered—Subsequent mortgage registered—Delivery of possession—Purchaser at sale in execution of decree—Notice.*] In 1875 the land in dispute was mortgaged to defendant No. 2 under two *san*-mortgage bonds, which were optionally registrable, but were not registered. In 1885, the land was mortgaged to plaintiff by a registered mortgage accompanied with possession. In 1886, the defendant No. 2 obtained a decree upon his *san*-mortgage bond, in execution of which the mortgaged property was brought to sale and purchased by defendant No. 3. Defendant No. 3 was afterwards put in possession by the Court. Thereupon the plaintiff sued to enforce his mortgage lien against the property in the hands of defendant No. 3, who pleaded that the *san*-mortgages of 1875 were entitled to priority over the plaintiff's mortgage of 1885, and that he as purchaser at a sale under a decree obtained upon the *san*-mortgages held the property free from the plaintiff's claim:—*Held*, that the plaintiff's mortgage, having been executed and registered after Act III of 1877 had come into force, was entitled to priority over the unregistered *san*-mortgage bonds under s. 50 of the Act. A *san*-mortgage is not within the exceptions mentioned in s. 50 of the Act:—*Held*, also, that under s. 47 of the Registration Act (III of 1877) the plaintiff's registered mortgage began to operate from the date of its registration, and was not affected by the decree subsequently obtained upon the earlier mortgages. By the custom of Gujarat, transfer of possession, which is necessary under general Hindu law, is not essential to validate *san*-mortgages, and such mortgages have always been held valid charges as between mortgagor and mortgagee, but they are liable to be defeated in case of the transfer of interest to third parties under registered instruments. Apart from the doctrine of equitable notice, registration under Act XVI of 1864 and Act VIII of 1871 conferred no priority on a registered document as against a document the registration of which was optional. Since Act III of 1877, however, the competition obtains in a more general form, and confers priority on all documents required to be registered, and registered since Act III of 1877 was passed, over all prior unregistered deeds of an antagonistic character. JETHABHAI DAYALJI *v.* GIRDHAR.

[20 Bom. 158

7.—s. 50.—*Registered and unregistered documents — Priority—Notice.*] *Held*, that s. 50 of the Registration Act, 1877, will not avail to give the holder of a subsequent registered deed priority in respect of his deed over the holder of an earlier registered deed not being a compulsorily registrable deed, if in fact the holder of the registered deed has at the time of its execution notice of the earlier unregistered deed. *Abool Hossein* v. *Raghu Nath Saku*, I. L. R. 13 Calc. 70; *Hathising Sobhai* v. *Kuvarji Javher*, I. L. R. 10 Bom. 105; and *Krishnamma* v. *Suranna*, I. L. R. 16 Mad. 148, followed; *Agra Bank* v. *Barry*, L. R. 7 E. & I. App. 135; and *Ram Autar* v. *Dhanauri*, I. L. R. 8 All. 540, referred to. DIWAN SINGH *v.* JADHO SINGH.

[19 All. 145

8.—s. 50.—*Loss of sale-deed—Suit for execution and registration of fresh deed—Subsequent transfer with notice of former sale—Priority—Right to possession.*] When a deed of sale of immoveable property for more than Rs. 100 is lost within the time allowed for the registration of the same, the purchaser may bring a suit against the vendor to compel the execution and registration of a fresh deed; and if, after the execution of the lost sale-deed, the vendor has resold the property by a registered deed and delivered possession thereof to another who has notice of the sale to the plaintiff, the latter is entitled, as against the subsequent purchaser, to a decree for the possession of the property. NALLAPPA REDDI *v.* RAMALINGACHI REDDI.

[20 Mad. 250

——, s. 59.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.

[17 All. 428

——, s. 74.—*Sub-Registrar holding inquiry under order of the Registrar—Liability of witness giving evidence in such inquiry to prosecution—Registration Act, s. 82.*] An inquiry under s. 74 of the Registration Act should be made by the Registrar himself. He cannot delegate his power to

REGISTRATION ACT (III OF 1877)— *continued.*

any one else. A Sub-Registrar holding such an inquiry under an order of the Registrar cannot be said to be acting in execution of the Registration Act in any proceeding or inquiry under that Act. An order for the prosecution of a witness under s. 82 of the Registration Act, who gives evidence before the Sub-Registrar in such an inquiry, is wrong in law. MATA DAYAL *v.* QUEEN-EMPRESS.

[24 Calc. 755

——•——, s. 75.

See s. 77.

[21 Bom. 69, 724

———, s. 77.

See LIMITATION ACT, s. 5.

[20 Mad. 249

1.—s. 77.—*Limitation Act (XV of 1877), s. 7—Suit by infant to enforce registration—Special rule of limitation.*] The Registration Act, 1877, being a special Act complete in itself, the provisions of the Limitation Act, s. 7, do not apply to suits instituted under s. 77 for a decree directing a document to be registered :—*Held*, accordingly, that a suit by an infant to enforce the registration of a conveyance having been instituted more than thirty days after refusal on the part of a Registrar to register it is barred by limitation. VEERAMMA *v.* ABBIAH.

[18 Mad. 99

2.—s. 77.—*Lease, Suit to compel registration of—Right of suit.*] Certain lessees, whose lessor had refused to be a party to registering the lease, without applying for registration to the Sub-Registrar or Registrar, brought a suit within four months of the execution of the lease, claiming that the lessor might be ordered to cause the lease to be registered :—*Held*, that such a suit would lie independently of the Registration Act (III of 1877), and that s. 77 of the said Act would not apply so as to bar the suit. *Ram Ghulam* v. *Chotey Lal*, I. L. R. 2 All. 46, approved; *Bhagwan Singh* v. *Khuda Bakhsh*, I. L. R. 3 All. 397; and *Edun* v. *Mahomed Siddik*, I. L. R. 9 Calc. 151, distinguished. ABDULLAH KHAN *v.* JANKI.

[16 All. 303

3.—s. 77.—*Compulsory registration—Execution of document admitted—Cancellation of document.*] On the 26th January, 1892, the defendant executed a conveyance of certain land to the plaintiff. On the 26th May, 1892, the plaintiff presented the conveyance for registration, but registration was refused. The plaintiff now sued for a decree directing that the conveyance be registered under the Registration Act, 1877, s. 77. The defendant pleaded that the conveyance had been cancelled :—*Held* (without determining the question of cancellation), that the plaintiff was entitled to the decree prayed for. The only question for decision in a suit under this section is the *factum* of execution. BALAMBAL AMMAL *v.* ARUNACHALA CHETTI.

[18 Mad. 255

REGISTRATION ACT (III OF 1877)— *continued.*

4.—s. 77.—*Suit to compel registration—Discretion of Registrar in acceptance of document for registration under s. 24 of the Registration Act—Registrable document with another document annexed, the latter, if presented by itself, being beyond time—Registration Act (III of 1877), ss. 24, 34 and 75.*] A registrable document, which had been executed by the plaintiff on the one part and by the defendants *T* and one *M* on the other part, was accepted for registration by the Sub-Registrar of Bombay after four months from the date of execution under s. 24 of the Registration Act (III of 1877); *M* subsequently admitted execution, and the document was registered as against him; but the defendant *T* objected to its registration, and the Registrar refused to register it. The plaintiff then brought this suit under s. 77 of the Registration Act praying for an order directing the registration of the document. The defendant contended that the document ought not to have been accepted for registration without inquiry as to whether the failure to present it within four months had been caused by urgent necessity or unavoidable accident, and at the hearing of the case Counsel for the defendants proposed to ask the Registrar's clerk in his examination whether any such inquiry was made :—*Held* (in the original Court by FULTON, J.), following *Durga Singh* v. *Mathura Das*, I. L. R. 6 All. 460, that the question should be disallowed, the Court having no jurisdiction to inquire into the exercise of the Registrar's discretion under s. 24 of the Registration Act:—*Held*, on appeal, by FARRAN, C. J., and STRACHEY, J., that when a Registrar has directed under s. 34 that the document shall be accepted for registration, the Court cannot inquire under ss. 77 and 24 into the propriety of that direction. *Durga Singh* v. *Mathura Das*, I. L. R. 6 All. 460, approved of and followed. The proviso to s. 34 allows a further period of four months (in addition to the four months allowed by s. 24) within which to appear subject to the conditions set out in the proviso. The defendants executed and delivered two documents, A and B, to the plaintiff, A being an agreement of equitable mortgage, and B an agreement that they would register A and do all things necessary therefor, and in case they failed to do so, to pay whatever the plaintiff could claim under A if it had been registered. The plaintiff obtained an order for the registration of A, but failed to present it for registration within thirty days after such order as required by s. 75 of the Registration Act, and when he did present it, registration was consequently refused. He subsequently lodged document B for registration with A as an annexure to it, and it was accepted on payment of a penalty under s. 24 of the Registration Act. The Registrar, however, refused to register B on the grounds (1) that without A there would be nothing to show to what property B referred, and (2) to register A as an annexure to B would be contrary to the provisions of s. 75, which limited the time for registration to thirty days. The plaintiff then brought this suit under s. 77 praying for an order for the registration of B with its

REGISTRATION ACT (III OF 1877)—*continued.*

accompaniment A within thirty days from the date of decree:—*Held* (in the original Court by FULTON, J), that B being a registrable document of which execution had been admitted, and it having been presented within time and accepted under s. 24 of the Registration Act, ought to be registered, the document A being copied out as an annexure. Decree accordingly. *Quære:* As to the effect such registration might have on A, and whether it would render it efficacious as a registered document:—*Held*, on appeal, by FARRAN, C. J., and STRACHEY, J., that the decree ordering the registration of B was correct. The document was a mere personal covenant to do a particular act with reference to a particular document. There was nothing on the face of it to show that the accompanying document referred to in it related to immoveable property. The registering officer would travel out of his functions if he were to institute an inquiry as to what was the nature of the document referred to:—*Held*, also (varying the decree of the lower Court), that document A should not be copied as an annexure to document B. If document A were in the nature of a schedule or appendix to document B, then the two documents could be registered as one; but as they appeared to be two distinct documents separately stamped and executed for different objects, they could not be so registered. The Registrar had no power to inquire what document was referred to in the document he was asked to register. If he could not register the two documents as one, neither could the Court do so under s. 77. TULLOCKCHAND HARNATH *v.* GOKULBHOY MULCHAND.

[21 Bom. 724

s. c. in Court below.

GOKULBHOY MULCHAND *v.* TULLOCKCHAND HARNATH.

[21 Bom. 69

5.—s. 77.—*Suit for registration of a conveyance—Power of Court to inquire into the genuineness as well as the validity of a document—Effect of execution of conveyance by a certificated guardian in contravention of the terms of permission granted by the District Judge—Guardians and Wards Act (VIII of 1890), s. 30.*] In a suit under s. 77 of the Registration Act a Court cannot go into any matter affecting the validity of a document apart from its genuineness. The question of its validity must be determined in a suit properly framed for that purpose. *Balambal Ammal* v. *Arunachala Chetti*, I. L. R. 18 Mad. 255, approved. Where therefore, a document was executed by the certificated guardian of a minor in contravention of the terms of permission accorded by the District Judge:—*Held*, that the Court could under s. 77 direct its registration, if only the document was proved to be genuine, although the document was voidable at the instance of the minor under s. 30, of Act VIII of 1890. RAJ LAKHI GHOSE *v.* DEBENDRA CHANDRA MOJUMDAR.

[24 Calc. 686

REGISTRATION ACT (III OF 1877)—*concluded.*

6.—s. 77 and s. 24.—*Suit to compel registration of document—Right of suit.*] No suit lies under s. 77 of the Registration Act (III of 1877) against an order made under s. 24 of that Act refusing to direct a document to be accepted for registration. GANGAVA *v.* SAYAVA.

[21 Bom. 699

REGULATIONS MADE UNDER STATUTE 33 VICT., CAP. 3.

——, 1872—III.

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION.

[22 Calc. 473

——, 1876—IV.

See TERAI REGULATION, 1876.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[17 All. 483

——, 1886—I.

See ASSAM LAND AND REVENUE REGULATION, S. 154.

[24 Calc. 239

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION.

[23 Calc. 514
[24 Calc. 751

REHEARING.

See COMPANIES ACT, S. 169.

[19 Bom. 208

See PRIVY COUNCIL, PRACTICE OF—REHEARING.

[19 All. 209
[L. R. 24 I. A. 49

RELATIONSHIP, STATEMENTS AS TO EXISTENCE OF.

See EVIDENCE ACT, S. 32.

[24 Calc. 265

RELEASE, DEED OF.

See HINDU LAW—ADOPTION—SECOND, SIMULTANEOUS, AND CONDITIONAL, ADOPTIONS.

[19 Bom. 239

See REGISTRATION ACT, S. 17.

[19 Bom. 239

See STAMP ACT, SCH. I, ART. 54.

[18 Mad. 233

RELIEF.

See RIGHT OF SUIT—CHARITIES.

[21 Bom. 257

——, Alternative.

See BENGAL TENANCY ACT, S. 155.

[22 Calc. 77

See PLAINT—FORM AND CONTENTS OF PLAINT—FRAME OF SUITS GENERALLY.

[18 All. 125

——, Consequential.

See CASES UNDER DECLARATORY DECREE, SUIT FOR.

See MADRAS LAND REVENUE ASSESSMENT ACT, S. 2.

[19 Mad. 292

See VALUATION OF SUIT—APPEALS.

[18 Bom. 100
[19 Bom. 198
[23 Calc. 645

See VALUATION OF SUIT—SUITS.

[20 Bom. 736

——, Incidental to principal.

See VALUATION OF SUIT—APPEALS.

[19 Bom. 198

—— not prayed for, Grant of.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.

[17 Mad. 168

—— on different ground from that prayed.

See VARIANCE BETWEEN PLEADING AND PROOF.

[22 Calc. 589

—Alternative reliefs—Suit for possession alleging partition but failing to prove it—Variance between pleading and proof.] The plaintiff sued to recover possession of the northern half of a certain plot of land, alleging that it had fallen to his share at a partition made in 1887, and that he was illegally dispossessed thereof by the defendant in 1890. He also prayed, in the alternative, that if the alleged partition were not proved, the land should be partitioned, and his share awarded to him. The suit was dismissed by the lower Courts on the ground that the alleged partition was not proved, and that no order for partition could be made in the face of the plaintiff's distinct allegation that it had already taken place: *—Held*, that the plaintiff's allegation of partition did not preclude him from seeking the alternative relief on the strength of his general title. NINGAPPA *v.* SHIVAPPA.

[19 Bom. 323

RELIGION, OFFENCES RELATING TO.

1.—*Penal Code (Act XLV of* 1860), *s.* 296—*Disturbing a religious assembly.*] The worship referred to in s. 296 of the Penal Code must be real worship and not a cloak for doing something else, and the assembly must be lawfully engaged in worship. If the ceremony is commenced by an act which is not lawful, it cannot be said that the persons engaged in it are lawfully engaged from the mere circumstance of their falling into a posture of worship, though such worship may be real. As to whether a worship is real or not much must depend upon the circumstances under which it is performed. *Per* BANERJEE, J.—To constitute an offence under s. 296 of the Penal Code (1) there must be a *voluntary* disturbance caused; (2) the disturbance must be caused to an assembly engaged in *religious worship* or *religious ceremonies;* and (3) the assembly must be *lawfully* engaged in such worship or ceremonies, *i.e.*, they must be doing what they have a right to do. JAIPAL GIR *v.* DHARMAPALA.

[23 Calc. 60

2.—*Penal Code (Act XLV of* 1860), *s.* 297—*Trespass on burial ground—Ploughing up burial ground—Permission of owner.*] *Held*, that persons who entered upon a burial place and ploughed up the graves were liable to be convicted of the offence defined by s. 297 of the Penal Code notwithstanding that their entry on the land was by the consent of the owner thereof. QUEEN-EMPRESS *v.* SUBHAN.

[18 All. 395

RELINQUISHMENT OF RIGHT.

See MAHOMEDAN LAW—INHERITANCE.

[19 Mad. 176

RELINQUISHMENT, DEED OF.

See REGISTRATION ACT, S. 17.

[20 Mad. 367

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

1.—*Civil Procedure Code* (1882), *s.* 43—*Mahomedan law—Succession of a Mahomedan widow by local custom to a life-interest in the estate of her husband—Cause of action in her suit for dower distinguished from that in her suit for such estate.*] A decree in a suit brought by a Mahomedan widow against the brother of her deceased husband, declaring her right to possess for life the estate of the latter in accordance with a proved local custom, with an order for possession, was affirmed. A decree in a suit previously brought by the widow against the same defendant for her dower, gave no occasion for the application of s. 43 of the Civil Procedure Code, having been made upon a cause of action distinct from that on which the present suit was founded. *Raja of Pittapur* v. *Venkata Mahipati Surya*

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

I. L. R. 8 Mad. 520; L. R. 12 I. A. 119, referred to and followed. MAHOMED RIASAT ALI *v.* HASIN BANU.

[21 Calc. 157
[L. R. 20 I. A. 155

2.—*Civil Procedure Code* (1882), *s.* 43—*Suit for money by mortgagee against sons of a deceased judgment-debtor—Former suit on mortgage against father—Cause of action.*] A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October, 1877. The decree provided for payment of the secured debt in various instalments by May, 1895. The mortgagor died in 1883 having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons. The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews for the payment out of the family property of all the unpaid instalments:—*Held*, that the plaintiff was not precluded from maintaining the suit against the sons of the mortgagor by the Civil Procedure Code, s. 43. RAMAYYA *v.* VENKATARATNAM.

[17 Mad. 122

3.—*Civil Procedure Code* (1882), *s.* 43—*Suit for specific performance of a contract of sale and to execute a sale-deed—Sale-deed subsequently executed by the Court under s.* 262 *of the Civil Procedure Code—Suit on sale-deed to recover possession—Cause of action.*] The plaintiff claiming specific performance of a contract of sale sued the defendant to compel him to execute a deed of sale, alleging that he had paid the purchase-money to the defendant and had obtained possession, but was subsequently dispossessed. The plaintiff had claimed the value of standing crops or damages for the same. The Court found that the plaintiff had paid the purchase-money, but had not got possession, and ordered defendant to execute a deed of sale. On failure of the defendant to do so, the Court executed a deed of sale in plaintiff's favour under s. 262 of the Civil Procedure Code (Act XIV of 1882). The plaintiff thereupon brought the present suit to recover possession on the strength of the deed of sale. Defendant pleaded that this second suit was barred under s. 43 of the Civil Procedure Code:—*Held*, that s. 43 was not applicable and did not bar the present suit, because the alleged cause of action was not the breach of the contract, but a new and distinct one arising from the deed of sale which the defendant had contracted to pass. NATHU PANDU *v.* BUDHU BHIKA.

[18 Bom. 537

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

4.—*Civil Procedure Code* (1882), *s.* 43—*Withdrawal of suit with permission to bring a fresh suit on the same cause of action—Civil Procedure Code, s.* 373.] Where a suit is withdrawn with permission under the first para. of s. 373 of the Code of Civil Procedure, the effect is to leave the parties in the same position as that in which they would have been if the suit had never been brought. A plaintiff therefore who has obtained an order under s. 373 of the Code, will not be debarred by s. 43 from claiming in a subsequent suit a relief which he might have included, but did not, in the suit which he was permitted to withdraw. *Venkata Shetti* v. *Ranga Nayak*, I. L. R. 10 Mad. 160, followed. BEHARI LAL PAL *v.* BARAN MAI DASI.

[17 All. 53

5.—*Civil Procedure Code, ss.* 43, 58, 278, 280 *and* 283—*Cause of action—Intervenor claiming attached property by two separate titles—Single order raising attachment—Two suits by judgment-creditors for declaration of their right to attach—Order of filing of suits.*] A plaintiff's cause of action consists of every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove such fact, but every fact which is necessary to be proved. *Read* v. *Brown* L. R. 22 Q. B. D. 128, referred to. The plaintiffs, holding a simple money decree against two persons, *B R* and *M R*, attached in execution thereof (*a*) their judgment-debtors' mortgagee interest in a certain mortgage; and (*b*) a house said to belong to their judgment-debtors. Against this attachment one *M* filed objections under s. 278 of the Code of Civil Procedure, in consequence of which the property was released from attachment. The plaintiffs thereupon brought two suits under s. 283 of the Code of Civil Procedure, one in respect of the mortgagee interest and the other in respect of the house:—*Held* by the Full Bench (AIKMAN, J., *dissentiente*), that the first essential of the plaintiffs' cause of action was the order made under s. 280 of the Code of Civil Procedure, and that, until that order was made, they had no cause of action. The cause of action was the order under s. 280, which had been obtained by *M*, and the right and title of the plaintiffs to bring the subjects of attachment to sale in execution of their decree. The title or titles which the defendant might prove formed no part of the plaintiffs' cause of action, nor would the defendant's allegation of different titles in herself to different portions of the property split up the plaintiffs' cause of action into different and distinct causes of action. Similarly the fact that the plaintiffs' judgment-debtors held or were alleged to hold portions of the property under different titles would not split up the plaintiffs' cause of action into different causes of action. Section 43 of the Code of Civil Procedure has nothing to do with the evidence which may be necessary or may be produced to support or

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

defend a cause of action or with the desire of a plaintiff to bring more suits than one, or with the devolution of title where the cause of action relates to land or other kind of property. In the above case consequently s. 43 of the Code barred the later of the plaintiff's two suits:—*Held*, also, that where two suits are filed on the same day, it must be presumed until the contrary is proved that they were presented and admitted in the order in which their numbers appear in the register of civil suits prescribed by s. 58 of the Code of Civil Procedure. *Kaleshar Prasad* v. *Jagan Nath*, I. L. R. 1 All. 650; *Appasami* v. *Ramasami*, I. L. R. 9 Mad. 279; and *Duncan Brothers & Co.* v. *Jeetmull Greedharee Lall*, I. L. R. 19 Calc. 372, referred to; *Zahur Husain* v. *Muhammad Hasan*, Weekly Notes, All. (1888) 147; and *Muhammad Ibrahim Khan* v. *Habib-ul-lah Khan*, Weekly Notes, All. (1886) 113, overruled. *Per* AIKMAN, J.—Although it was the single order in the execution department which necessitated the plaintiffs bringing their suits, the plaintiffs' real causes of action were the separate transactions entered into by the judgment-debtors with the objector under s. 278 of the Code, and they were therefore entitled to bring separate suits. MURTI *v.* BHOLA RAM.

[16 All. 165

6.—*Civil Procedure Code* (1882), *s.* 43—*Suit for interest on a bond waiving right already accrued to sue for principal—Second suit for principal and interest subsequently accrued.*] Certain Mahomedans hypothecated to the plaintiff to secure repayment of a debt, their interest in lands, which had been enfranchised as a personal *inam* —a claim that the lands constituted the endowment of certain mosques having been rejected at the *inam* inquiry. The hypothecation deed was executed in 1875 and registered, and it contained the following terms with regard to interest and the repayment of the debt:—"We (the obligors) shall pay interest at 7 per cent. per annum before the 30th October of each year; we shall pay in full the principal amount on the 30th October, 1878, after clearing off the interest, and redeem this deed; should we fail to pay the interest regularly according to the instalments, we shall at once pay the principal together with the amount of interest." Default was made in the payment of interest in 1876; and in 1877, the plaintiff sued in a District Munsif's Court for the interest then due, expressly stating in the plaint that he agreed to accept payment of the principal and the subsequent years' interest at the times fixed in the deed, and he obtained a decree as prayed. The plaintiff in 1888 now sued the executants of the above instrument and their heirs and representatives to recover the principal together with interest up to date:—*Held*, that this suit was not barred by the Civil Procedure Code, s. 43, although the creditor's election not to seek a decree for the full amount in the suit of 1877 had not been communicated to the debtors before that suit. BADI BIBI SAHIBAL *v.* SAMI PILLAI.

[18 Mad. 257

7.—*Civil Procedure Code* (1882), *ss.* 43 *and* 44—*Claim for possession and for mesne profits arising out of one cause of action—Suit for possession—Subsequent suit for mesne profits.*] Where a plaintiff sued for possession of immoveable property upon a forfeiture, and for rent in respect of the said property up to the date of the alleged forfeiture, and having obtained a decree, subsequently brought a separate suit for mesne profits including the period from the date of the forfeiture to the date of the institution of the former suit:—*Held*, that the claim for mesne profits for the period abovementioned was barred by s. 43 of Code of Civil Procedure. *Lalji Mal* v. *Hulasi*, I. L. R. 3 All. 660; and *Venkoba* v. *Subbanna*, I. L, R. 11 Mad. 151, referred to. MEWA KUAR *v.* BANARSI PRASAD.

[17 All. 533

8.—*Civil Procedure Code* (1882), *s.* 43—*Covenant to pay interest on mortgage—Suit to recover arrears of interest—Subsequent suit for principal and interest.*] The breach of covenant in a mortgage-bond to pay interest each year, which covenant is not confined to the fixed period of the mortgage and is distinct from and independent of the claim of the mortgagee to recover the principal sum, and the performance of which is secured in a different manner, gives rise to a distinct cause of action which can be sued upon without suing for the principal, and a decree obtained on such bond for overdue interest does not, under s. 43 of the Civil Procedure Code (Act XIV of 1882), bar a subsequent suit to recover the principal and interest by sale of the mortgaged property. YASHVANT NARAYAN KAMAT *v.* VITHAL DIVAKAR PARULEKAR.

[21 Bom. 267

9.—*Civil Procedure Code* (1882), *s.* 43—*Transfer of Property Act, s.* 85—*Ejectment suit by a mortgagor's vendee against the purchaser under a mortgage decree—Subsequent suit to redeem.*] Certain land mortgaged to *A* was sold to *B*. *A* brought a suit on his mortgage without joining *B* as a party, obtained a decree for sale, and became the purchaser under the decree. *B* then sued to eject him praying for a declaration that the sale was not binding on him. The suit having been dismissed, he now sued to redeem:—*Held*, that the suit was not barred under the Civil Procedure Code, s. 43, and the plaintiff was entitled to redeem. KUPPU NAYUDU *v.* VENKATAKRISHNA REDDI.

[20 Mad. 82

10.—*Civil Procedure Code* (1882), *s.* 43—*Transfer of Property Act* (*IV of* 1882), *s.* 85—*Rights inter se of two mortgagees of the same property from the same mortgagor.*] Two persons each held a mortgage over the same property from the same

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*concluded.*

mortgagor. The mortgages were both executed on the same day. The mortgagees each instituted a suit for sale on the same day and obtained decrees, in execution of which they had the mortgaged property put up for sale, and each purchased it at the sale under his decree respectively. Neither mortgagee made the other a party to the suit on his mortgage. The representative (*S*) of one of the mortgagee decree-holders got possession of the mortgaged property and held it as against the other mortgagee decree-holder or his representatives. Thereupon the representatives of the other mortgagee brought their suit for possession of a moiety of the property, or in the alternative for redemption of the other mortgage :—*Held*, that such suit was not barred either by the provisions of s. 43 of the Code of Civil Procedure, or by reason of those of s. 85 of the Transfer of Property Act, 1882. BALMAKUND *v.* SANGARI.

[19 All. 379

REMAND.

		Col.
1.	Power of Remand	... 1064
2.	Ground for Remand	... 1065
3.	Procedure on Remand	... 1066
4.	Cases of Appeal after Remand	... 1067

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

[18 Mad. 94
[24 Calc. 98

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.

[18 Bom. 250

See PARTIES—ADDING PARTIES TO SUITS—PROCEDURE.

[18 All. 332

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.

[23 Calc. 179
[24 Calc. 98

——, Findings on.

See JUDGMENT—CIVIL CASES.

[19 Bom. 551

——, Order of.

See APPEAL—ORDERS.

[16 All. 375
[19 Mad. 167, 391

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—FINALITY OF DECREE OR ORDER.

[17 All. 112
[L. R. 22 I. A. 1

REMAND—*continued.*

See LETTERS PATENT, HIGH COURT, CL. 15.

[20 Mad. 152

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 774

(1) POWER OF REMAND.

1.—*Civil Procedure Code* (1882), *ss.* 562, 566 *and* 582—*Order made on appeal to amend plaint.*] On appeal from the decision of a District Munsif in favour of the plaintiffs in a suit for the recovery of rent, the District Judge set aside the decree of the lower Court, ordered a new trial, and directed the amendment of the plaint by inserting the exact boundaries of the land on which the plaintiffs claimed the rent :—*Held*, that the order for amendment of the plaint was bad under s. 562 of the Code of Civil Procedure, since the original Court had not "disposed of the suit upon a preliminary point," and that it was likewise bad under s. 582, since there had been no dispute as to the boundaries of the land before the original Court. If the information was necessary, the District Judge should have sent down an issue on the point for trial under s. 566 of the Code. KRISHNAYA NAVADA *v.* PANCHU.

[17 Mad. 187

2.—*Civil Procedure Code* (1882), *s.* 562—*Court to which remand must be made.*] When a suit is not disposed of on a preliminary point, it is not competent to a Court of appeal under s. 562 of the Code of Civil Procedure (Act XIV of 1882) to remand the case for a fresh trial. The section, moreover, contemplates a remand back to the Court which first disposed of the suit, and to no other Court. BAI SHRI MAJIRAJBA *v.* MAGANLAL BHAISHANKAR.

[19 Bom. 303

3.—*Remand of case not tried on preliminary issue—Civil Procedure Code* (1882), *ss.* 562 *and* 578—*Irregularity affecting the merits.*] Where a District Court reversed the District Munsif's decree and remanded the case for a revised finding on the merits :—*Held*, that this procedure was *ultra vires* and illegal :—*Held*, further, that as the irregularity might have affected the merits of the case, s. 578, Civil Procedure Code, was inapplicable. MALLIKARJUNA *v.* PATHANENI.

[19 Mad. 479

4.—*Civil Procedure Code* (1882), *s.* 562—*Dismissal of suit for want of cause of action.*] Where a District Munsif, without entering into the merits of a case, dismissed a suit on the ground that the plaintiffs had no cause of action, and on appeal the Appellate Court reversed his decree and remanded the case :—*Held*, that the suit had been disposed of upon a preliminary point within the meaning of s. 562, Civil Procedure Code, and that the remand was right. KANAKAMMAL *v.* RANGACHARIAR.

[20 Mad. 25

REMAND—*continued.*

(1) POWER OF REMAND—*concluded.*

5.—*Civil Procedure Code* (1882), *ss.* 562, 564 *and* 566—*Refusal of Court of first instance to record evidence tendered—Refusal of Appellate Court to record additional evidence.*] The plaintiffs in the Court of first instance produced both documentary and oral evidence in support of their claim. The Court being satisfied with the documentary evidence produced by the plaintiffs declined to record the evidence of the witnesses tendered by them. The defendants appealed, and the lower Appellate Court reversed the decree of the Court of first instance, but in its turn declined to allow the plaintiffs, respondents, to produce fresh evidence before it. On appeal by the plaintiffs to the High Conrt, it was *held* that though there was no section of the Code of Civil Procedure strictly applicable to the circumstances of the case, the Court was, notwithstanding s. 554 of the Code, warranted *ex debito justitiæ* in setting aside all proceedings of both Courts below and in directing the Court of first instance to re-try the case, admitting all admissible evidence which had previously been tendered to the Court of first instance and which that Court had refused to record. DURGA DIHAL DAS *v.* ANORAJI.

[17 All. 29

6.—*Civil Procedure Code* (1882), *s.* 566—*Issue not disposed of by the lower Appellate Court—Procedure.*] In a suit for money due under a bond, the plaintiff tendered three witnesses in the Court of first instance to prove execution of the bond. That Court having examined one of such witnesses declined to examine the others, being satisfied on his evidence of the genuineness of the bond, and passed a decree in favour of the plaintiff. On appeal by the defendant the lower Appellate Court disposed of the sole issue in the appeal, *viz.*, execution or non-execution, in the following words:—"I do not think the claim made out by the plaintiff on his own evidence":—*Held*, that under the circumstances above described it was competent to the High Court in second appeal to act under s. 566 of the Code of Civil Procedure and refer an issue as to the execution or non-execution of the bond in suit to the lower Appellate Court, that issue having practically not been tried at all by the said Court. *Kanhai Lal* v. *Manorath Ram*, Weekly Notes, All. (1894) 19; *Madho Singh* v. *Kashi Singh*, I. L. R. 11 All. 342; and *Durga Dihal Das* v. *Anoraji*, I. L. R. 17 All. 29, referred to. GANGA PRASAD *v.* LAL BAHADUR SINGH.

[17 All. 117

(2) GROUND FOR REMAND.

7.—*Civil Procedure Code* (1882), *s.* 566—*Remand for trial of a new issue.*] The *karnavan* of a *tarwad* in Malabar sued to recover property acquired by his sister (deceased) and now in the occupation of the defendants, her children. The parties were Mapillas. The defendants pleaded (i) that the property had been given to them and their mother jointly; (2) that their mother was not governed by Marumakkatayam law

REMAND—*continued.*

(2) GROUND FOR REMAND—*concluded.*

The Court of first instance found the first-mentioned plea to be good, and dismissed the suit, and also found that the family was governed by Marumakkatayam law. The Court of first appeal dissented from the above finding as to the first plea, and, without deciding the second point, remanded the case for the trial of a general issue as to the mode of devolution of self-acquired property in Marumakkatayam Mapilla families in North Malabar, and ultimately it dismissed the suit on that issue:—*Held*, that the order of remand was not one which should have been made under the Civil Procedure Code, s. 566, and the proceedings taken under it were irregular. ILLIKA PAKRAMAR *v.* KUTTI KUNHAMED.

[17 Mad. 69

8.—*Civil Procedure Code* (1882), *ss.* 562 *and* 566—*Illegal order of remand—Duty of Appellate Court when fresh parties or addition or amendment of issues is necessary.*] In a suit by mortgagees to redeem a prior mortgage issues were framed and tried and disposed of in favour of the plaintiffs as to the questions whether the plaintiff's mortgage was valid, whether the mortgage sought to be redeemed had been discharged, and whether the suit was barred by limitation. The Court of first appeal was of opinion that these questions had not been properly considered, and set aside the decree for the plaintiffs, and directed that a fresh trial be held, certain fresh parties being brought on the record:—*Held* (1) that the order of remand was illegal, there being no proper ground for it under ss. 562 and 566 of the Code of Civil Procedure; (2) that the lower Appellate Court should have joined the persons necessary for the suit, and should have so altered or added to the issues as to raise all questions properly arising, and should have referred them for trial to the Court of first instance. KELU MULACHERI NAYAR *v.* CHENDU.

[19 Mad. 157

9.—*Wrong issue framed by lower Court—Finding in judgment on the point raised by correct issue.*] Where the lower Appellate Court framed a wrong issue for decision, but it appeared from its judgment that there was a finding on the point which would have been raised if the correct issue had been framed, the High Court in second appeal refused to remand the case for a new finding on that issue. VISHNU RAMCHANDRA *v.* GANESH APPAJI CHAUDHARI.

[21 Bom. 325

(3) PROCEDURE ON REMAND.

10.—*Civil Procedure Code* (1882), *s.* 566—*Power of Court to disregard findings returned—Appeal under Letters Patent, High Court, N.-W. P., cl.* 10.] A single Judge of the High Court hearing a second appeal made an order of reference under s. 566 of the Code of Civil Procedure. On the return to the reference, the appeal came before another Judge, who, holding that the reference was unnecessary, and that the original findings of fact in

REMAND—*continued.*

(3) PROCEDURE ON REMAND—*concluded.*

the Court below were sufficient to dispose of the appeal, disregarded the findings on the reference, and dismissed the appeal. In appeal under s. 10 of the Letters Patent, it was *held* that it was competent to the Judge before whom the appeal had subseqently come to disregard the findings on the order of reference. MUBARAK HUSAIN *v.* BIHARI.

[16 All. 306

11.—*Taking evidence on remand—Power to take additional evidence on remand where order of remand does not so order—Civil Procedure Code, ss.* 562, 566 *and* 568.] Suit by the adoptive daughter of a temple dancing woman, deceased, to compel the trustees of the temple to permit the performance of a certain ceremony, in view to her entering on the duties and emoluments attached to the office of her adoptive mother. On second appeal, the High Court directed the return of a finding on the issue (previously framed but not tried) whether the plaintiff's adoption was valid. Fresh evidence was taken, and the finding was that the adoption was made with the intention that the girl should be prostituted while she was still a minor:—*Held* that the lower Court had power to take additional evidence on the issue remanded although not specially authorised to do so by the order of remand. KAMALAKSHI *v.* RAMASAMI CHETTI.

[19 Mad. 127

(4) CASES OF APPEAL AFTER REMAND.

12.—*Civil Procedure Code* (1882), *s.* 56—*Decree in appeal from order of remand dismissing appeal from decree in the suit—Civil Procedure Code, s.* 13—*Res judicata.*] It is competent to a High Court in an appeal from an order of remand under s. 562 of the Code of Civil Procedure to pass a decree dismissing the appeal preferred to the lower Court from the decree in the suit. *Bhau Bala* v. *Bapaji Bapuji*, I. L. R. 14 Bom. 14; and *Abrahim Khan* v. *Faiz-un-nessa*, I. L. R. 17 Calc. 168, referred to. HASAN ALI *v.* SIRAJ HUSAIN.

[16 All. 252

13.—*Civil Procedure Code, s.* 566—*Power of High Court in second appeal.*] A revenue-paying *taluk* was sold for arrears of *dâk* cess under the Public Demands Recovery Act. The sale was set aside on appeal by the Revenue Commissioner, but on an application for review made to his successor, the sale was confirmed, and the purchaser took possession. In a suit to recover possession of an 8 annas share of the *taluk* on the grounds, among others, that the order on review was passed without jurisdiction and without notice to the plaintiffs, and as such conferred no title on the purchaser, the District Judge, on appeal, held that the order on review not having been set aside remained in force, but he remanded the case under s. 566 for trial of the question of notice. On the case coming back to the Appellate Court, before another Judge, he held the order on review to be *ultra vires*, and the trial of the question of notice to be unnecessary. The defendants preferred

REMAND—*continued.*

(4) CASES OF APPEAL AFTER REMAND—*continued.*

a second appeal against the last judgment:—*Held*, that on the hearing of the appeal, the entire case, including the order of remand, was open to consideration, and that the High Court had power to determine whether that order or the order subsequently passed was correct on the merits. LALA PRYAG LAL *v.* JAI NARAYAN SINGH.

[22 Calc. 419

14.—*Civil Procedure Code* (1882), *ss.* 562, 590 *and* 591—*Order of remand—Power of High Court in second appeal.*] On an appeal from a decree of a District Munsif, it appeared that he had decided all the issues framed in the suit, but in the opinion of the District Judge he had based his judgment upon evidence improperly taken. The District Judge remanded the case to be retried, and in the event a decree was passed dismissing the suit which was affirmed on appeal by the Subordinate Judge:—*Held*, on second appeal, that the order of remand was illegal, and, although it had not been appealed against, the subsequent proceedings should be treated as non-existent, and the appeal to the District Court should be remanded to be disposed of in accordance with law. *Savitri* v. *Ramji*, I. L. R. 14 Bom. 232; and *Rameshar Singh* v. *Sheodin Singh*, I. L. R. 12 All. 510, referred to. SUBBA SASTRI *v.* BALACHANDRA SASTRI.

[18 Mad. 421

15.—*Omission to appeal from remand order—Objection to order allowed in appeal from final decree.*] The contention that a map was admissible in evidence was held to be open to the appellant, on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible. *Savitri* v. *Ramji*, I. L. R. 14 Bom. 232; and *Rameshar Singh* v. *Sheodin Singh*, I. L. R. 12 All. 510, followed. KANTO PRASHAD HAZARI *v.* JAGAT CHANDRA DUTTA.

[23 Calc. 335

16.—*Appeal against order of remand—Finding of fact—Civil Procedure Code* (1882), *ss.* 584 *and* 588.] Where an appeal is preferred against an appellate order under s. 588, Civil Procedure Code, the finding of fact by the lower Appellate Court is conclusive as between the parties on the proper construction of ss. 584 and 588, Civil Procedure Code. VENGANAYYAN *v.* RAMASAMI AYYAN.

[19 Mad. 422

17.—*Civil Procedure Code* (1882), *ss.* 562, 588 *and* 591—*Order of remand—Conditions under which an order passed in the course of a suit may be questioned in an appeal from the decree in such suit—Limitation.*] An order made under the Code of Civil Procedure from which an appeal is given under s. 588 of that Code may be questioned under s. 591 in an appeal from the decree in the suit, if the ground of objection is stated in the memorandum of appeal. So *held* by the Full Bench, following *Rameshar Singh* v.

REMAND—*concluded.*

(4) CASES OF APPEAL AFTER REMAND—*concluded.*

Sheodin Singh, I. L. R. 12 All. 510; *Muzhar Hossein* v. *Bodha Bibi*, I. L. R. 17 All. 112, distinguished:—*Held* (by EDGE, C. J., and AIKMAN, J.), that s. 591 of the Code of Civil Procedure does not enable an appellant to avoid limitation by coming up under s. 591 when the only ground of appeal is an order made under s. 562. Section 591 contemplates two things—there being a regular appeal about something else, and in that appeal the insertion of a ground of objection under s. 591. SHEO NATH SINGH v. RAM DIN SINGH.

[18 All. 19

RENT.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[21 Calc. 132

See APPEAL—N. W.-P. ACTS.

[18 All. 302

See BENGAL TENANCY ACT, s. 65.

[21 Calc. 722

See CESS.

[22 Calc. 680

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.

[19 All. 235

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—RENT.

[22 Calc. 680

——, Abatement of.

See ABATEMENT OF RENT.

[21 Calc. 1005
[L. R. 21 I. A. 118

——, Abatement of, Agreement for.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[24 Calc. 20

See REGISTRATION ACT, S. 18.

[24 Calc. 20

——, Apportionment of.

See ABATEMENT OF RENT.

[21 Calc. 1005
[L. R. 21 I. A. 118

See LANDLORD AND TENANT—OBLIGATION OF LANDLORD TO GIVE, AND MAINTAIN TENANT IN, POSSESSION.

[24 Calc. 296

RENT—*continued.*

——, Arrears of.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[18 All. 240
[24 Calc. 37

——, Deposit of, in Court.

See BENGAL TENANCY ACT, S. 61.

[21 Calc. 680

——, Determination of.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.

[16 All. 209

——, Effect of non-payment of.

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.

[18 Bom. 250
[18 All. 290

See POSSESSION—ADVERSE POSSESSION.

[18 Bom. 256

——, Enhancement of.

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE.

[22 Calc. 214
[L. R. 21 I. A. 131

——, Liability for.

See CASES UNDER LANDLORD AND TENANT—LIABILITY FOR RENT.

See SALE FOR ARREARS OF RENT—RIGHT AND LIABILITIES OF PURCHASERS.

[21 Calc. 169, 383

——, Payment of.

See CASES UNDER LANDLORD AND TENANT—PAYMENT OF RENT.

——, Payment of, in lieu of interest.

See LIMITATION ACT, S. 20.

[19 Bom. 663

See REGISTRATION ACT, S. 17.

[19 Bom. 663

——, Rate of.

See APPEAL—N.-W. P. ACTS.

[16 All. 51
[18 All. 463

See BENGAL TENANCY ACT, S. 30.

[21 Calc. 986

See MADRAS RENT RECOVERY ACT, S. 11.

[18 Mad. 216

RENT—*continued.*

See RES JUDICATA—ESTOPPEL BY JUDGMENT.
[21 Calc. 236

See VARIANCE BETWEEN PLEADING AND PROOF.
[24 Calc. 433

——, **Receipt of.**

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT, &C.
[25 Calc. 1
[L. R. 24 I. A. 164

——, **Receipts for.**

See EVIDENCE — CIVIL CASES — RENT RECEIPTS.
[24 Calc. 251

——, **Reduction of.**

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.
[20 Mad. 435

——, **Right to realise, Dispute as to.**

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION.
[23 Calc. 80

——, **Suit for.**

See ACT XX OF 1863, S. 3.
[19 Mad. 395

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[18 Bom. 394

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT.
[22 Calc. 658

See LAND REGISTRATION ACT.
[22 Calc. 454
[23 Calc. 87
[24 Calc. 404

See LIMITATION ACT, ART. 116.
[19 Mad. 52

See MUNSIF, JURISDICTION OF.
[20 Mad. 21

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.
[18 Bom. 141

See RES JUDICATA—ESTOPPEL BY JUDGMENT.
[21 Calc. 236

RENT—*concluded.*

See RES JUDICATA—MATTERS IN ISSUE.
[24 Calc. 569, 711

——, **Suit for arrears of.**

See BENGAL TENANCY ACT, SCH. III, ART. 2.
[23 Calc. 191

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.
[16 All. 209

See LANDLORD AND TENANT—LIABILITY FOR RENT.
[23 Calc. 205

See LIMITATION ACT, ART. 110.
[17 Mad. 225
[19 Mad. 21

See VARIANCE BETWEEN PLEADING AND PROOF.
[24 Calc. 433

——, **Suspension of.**

See LANDLORD AND TENANT—OBLIGATION OF LANDLORD TO GIVE, AND MAINTAIN TENANT IN, POSSESSION.
[24 Calc. 296

——, **Waiver of right to.**

See REGISTRATION ACT, S. 17.
[20 Mad. 367

REPORT OF SELECT COMMITTEE ON BILL.

See STATUTES, CONSTRUCTION OF.
[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

REPRESENTATION.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[17 Mad. 473

REPRESENTATIVE.

See CASES UNDER CIVIL PROCEDURE CODE, S. 244—PARTIES TO SUITS.

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

REPRESENTATIVE OF DECEASED PERSON.

See ABATEMENT OF SUIT—APPEALS.
[16 All. 211

See APPEAL—DECREES.
[19 All. 142

REPRESENTATIVE OF DECEASED PERSON—*continued.*

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[17 All. 245

See APPEAL—ORDERS.

[17 All. 286

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE.

[18 Bom. 315

See CIVIL PROCEDURE CODE. S. 244—QUESTIONS IN EXECUTION OF DECREE.

[17 All. 431

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[18 All. 156

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[19 All. 352

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—IRREGULAR OR DEFECTIVE APPLICATIONS.

[19 All. 337

See MAHOMEDAN LAW—DEBTS.

[21 Calc. 311

See MONEY PAID FOR BENEFIT OF ANOTHER.

[18 All. 471

See PARTIES—PARTIES TO SUITS—PARTNERSHIPS, SUITS CONCERNING.

[21 Bom. 412

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES.

——— not made party.

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[19 Bom. 276
[23 Calc. 686
[21 Bom.424

———, Suit by.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE

[16 All. 259

1.—*Civil Procedure Code* (1882), *s.* 252—*Legal representative—Suit against the heir and possessor of the assets of a deceased person.*] Where a party is sued for money as the heir and possessor of the assets of a deceased debtor, and it is proved that he has received sufficient assets to meet the debt, a personal decree therefor can be passed against him. NATHURAM SIVIJI SETT *v.* KUTTI HAJI.

[20 Mad. 446

2.—*Representative of insolvent debtor—Civil Procedure Code* (1882), *s.* 252—*Suit against widow of insolvent as his legal representative.*] The husband of the defendant was adjudicated an insolvent in 1891, and the usual order was made vesting his estate in the Official Assignee. He subsequently died without having filed his schedule, and no schedule had ever been filed. After his death a suit was brought by a creditor against the defendant as the "widow, heiress, and legal representative" of the deceased insolvent, in which suit a decree was made against her, "the amount to be levied out of the assets of the deceased in her hands." In an application by the defendant to have the decree set aside on the grounds that the Official Assignee was a necessary party to the suit, and that the decree should have been against him as her husband's representative, as his estate was in his lifetime, and since had continued to be, vested in the Official Assignee:—*Held*, that on the death of the insolvent his widow, the defendant, became his legal representative within the meaning of s. 252 of the Civil Procedure Code, and that the existence of the vesting order in no way affected her position as such representative. *Greender Chunder Ghose* v. *Mackintosh*, I. L. R. 4 Calc. 897; *Girdharlal* v. *Bai Shiv*, I. L. R. 8 Bom. 309; and *Kashi Prasad* v. *Miller*, I. L. R. 7 All. 752, referred to. CHANDMULL *v.* RANEESOONDERY DOSSEE.

[22 Calc. 259

3.—*Death of plaintiff subsequent to decree—Right of survivorship vested in defendant—Effect on vested right of plaintiff's representative.*] A decree for partition operates as a severance of the joint ownership. Where therefore *M*, a minor and only son, by his next friend sued his father and certain alienees of the family property for partition and obtained a decree, and subsequent to decree and pending appeal, the plaintiff died, and *M's* mother was brought on the record as deceased plaintiff's legal representative:—*Held*, that any right of survivorship which the defendant might have had, if the plaintiff had died before decree, was extinguished, and did not affect the rights of his mother who properly represented him. SUBBARAYA MUDALI *v.* MANIKA MUDALI.

[19 Mad. 345

4.—*Death of the judgment-debtor leaving minor sons—Widow in possession—Sons not parties to execution-proceedings—Sale in execution after judgment-debtor's death—Minor sons represented by their mother and guardian on record—Purchase of judgment-debtor's interest by decree-holder—Subsequent suit by sons to recover the property—Civil Procedure Code* (1859), *s.* 210—*Civil Procedure Code* (1882), *s.* 234.] Under s. 210 of

REPRESENTATIVE OF DECEASED PERSON—*concluded.*

the Civil Procedure Code (Act VIII of 1859), an execution sale of the property of a deceased judgment-debtor was binding, if the estate of the deceased was sufficiently represented *quoad* such property. A Hindu judgment-debtor died, leaving a widow and two sons, who were minors. His widow was placed on the record as his heir, and not his sons. Certain property of the deceased was sold in execution. The sale certificate issued to the purchaser stated that he had purchased the right, title and interest of the judgment-debtor in the property. In a suit subsequently brought by the sons:—*Held*, that they were bound by the sale. The widow of the deceased judgment-debtor, who as natural guardian of the minor sons was in possession of the property, was upon the record, and it was clear that it was the interest of the judgment-debtor, and not that of the widow, that was intended to be sold. ACHUT RAMCHANDRA PAI *v.* MANJUNATH VENKATNARNAPPA.

[21 Bom. 539

5.—*Civil Procedure Code* (1882), *s.* 234—*A stranger to a decree against a deceased person in possession of his property*—"*Legal representative.*"] The words "legal representative" in s. 234 of the Code of Civil Procedure do not include any person who does not in law represent the estate of the deceased person. Consequently, a stranger in possession of property of a deceased person who was not a party to a decree against such person cannot be proceeded against in execution otherwise than by a regular suit. CHATHAKELAN *v.* GOVINDA KARUMIAR.

[17 Mad. 186

6.—*Suit by creditor against estate of deceased debtor—Heirs of intestate debtor—Parties.*] In a suit by a creditor against the estate of a deceased debtor, who has died leaving a will, his heirs on intestacy do not represent his estate, and the suit is bad unless the estate is represented. MATANGINI DASSEE *v.* CHOONEYMONEY DASSEE.

[22 Calc. 903

7.—*Administrator appointed under Bombay Regulation VIII of* 1827, *s.* 10—*Act XIX of* 1841, *s.* 9—*Administrator-Generals Act* (*II of* 1874), *s.* 18—*Civil Procedure Code* (1882), *ss.* 365 *and* 582—*Death of appellant—Abatement of appeal.*] An administrator appointed under s. 10 of Bombay Regulation VIII of 1827 does not, by such appointment, become the legal representative of the deceased, or entitled to continue an appeal filed by him. MALAPA SIDAPA DESAI *v.* DEVI NAIK.

[21 Bom. 102

RESALE.

See SALE IN EXECUTION OF DECREE—RESALE.

[19 All. 22

RESALE, POWER OF.

See CONTRACT—BREACH OF CONTRACT.

[24 Calc. 124, 177
[19 All. 535

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.

[24 Calc. 124, 177
[19 All. 535

RESIDENCE.

See INSOLVENT ACT, S. 5.

[21 Calc. 634

See LUNATIC.

[24 Calc. 133

——, Constructive.

See FOREIGN COURT, JUDGMENT OF.

[20 Mad. 112

——, Temporary.

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[18 Bom. 290, 294
[L. R. 21 I. A. 18

See RECOGNIZANCE TO KEEP PEACE.

[24 Calc. 344

RESIDUARY LEGATEE.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[23 Calc. 446

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT.

[23 Calc. 446

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See APPEAL—ORDERS.

[21 Bom. 392

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[18 Bom. 37

See LIMITATION ACT, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.

[20 Bom. 175

1.—*Civil Procedure Code* (1882), *s.* 335—*Joint managers—Mortgage by one of such managers—Sale by mortgagee in execution of decree on mortgage and dispossession of the other manager—Application for restoration of possession by other joint manager.*] *K*, the owner of certain property, gave the management of it to his three nephews, *G*, *A* and *N*. *A* mortgaged the property, and the mortgagee sued on the mortgage and got a decree. In execution of the decree, the property was sold and purchased by *L*, who was put in possession

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

by the Court. *G*, one of the managers, then applied for possession under s. 335 of the Civil Procedure Code (Act XIV of 1882), alleging that he had been wrongfully dispossessed:—*Held*, that the mortgagee got no title to the property by his mortgage from *A* against the real owner *K*; and *G*, who was in actual possession as his manager (whether or not there were others equally entitled to share in the management), was entitled to prevent the purchaser *L* taking possession, and having been dispossessed had a claim to be restored to possession under s. 335 of the Civil Procedure Code. GOVIND BALVANT SHIVNEKAR *v.* LAKSHMAN BIN NANA TELI.

[18 Bom. 522

2.—*Civil Procedure Code* (1882), *ss.* 334 *and* 335—*Application by usufructuary mortgagee ejected by auction-purchaser to be restored to possession—Representative of party to suit—Auction-purchaser who was also assignee of decree—Judgment-debtor.*] In a suit for sale upon a mortgage the plaintiff having obtained a decree assigned the same, and the assignee brought the property decreed to be sold to sale and purchased it himself and obtained possession. A usufructuary mortgagee of the property who had been a party to the suit, and in whose favour the decree was, in so far that it declared his right to continue in possession, applied to be restored to possession and obtained an order in his favour. Thereupon the assignee, auction-purchaser, applied in revision to have the order restoring the usufructuary mortgagee to possession set aside:—*Held*, that the order in question was an order which could properly be made under s. 335 of the Code of Civil Procedure, and, being unappealable, an application for revision thereof might lie. The auction-purchaser, though he happened also to be the assignee of the decree, was not a representative of a party to the suit within the meaning of s. 244, nor was the usufructuary mortgagee a judgment-debtor within the meaning of s. 334 or s. 335, but he was a person other than a judgment-debtor, within the meaning of s. 335. SABHAJIT *v.* SRI GOPAL.

[17 All. 222

3.—*Resistance or obstruction to execution—Limitation—Renewal of resistance or obstruction—Fresh cause of action.*] The period of limitation provided for in s. 328 of the Code of Civil Procedure is a limitation which governs a cause of action arising out of a particular resistance of obstruction. So far as that resistance or obstruction is concerned, the decree-holder, if he wishes to take proceedings under s. 328, must do so within one month from the time of such resistance or obstruction. But the bar created by the limitation imposed by this section does not extend to and hold good so as to bar complaints against acts of resistance or obstruction made upon fresh proceedings taken by the decree-holder. *Ramasekara* v. *Dharmaraya*, I. L. R. 5 Mad. 113, followed; *Balvant Santaram* v. *Babaji*, I. L. R. 8 Bom. 602; and *Vinayak Rao Amrit* v. *Devrao Govind*, I. L. R. 11 Bom. 473, distinguished. NARAIN DAS *v.* HAZARI LAL.

[18 All. 233

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*concluded.*

RES JUDICATA.

Col.

1. Estoppel by Judgment ...1079
2. Adjudications ...1082
3. Judgments on Preliminary Points ...1083
4. Orders in Execution of Decree ...1084
5. Cause of Action ...1085
6. Matters in Issue ...1087
7. Parties 1093
   (*a*) Same Parties or their Representatives ...1093
   (*b*) Co-defendants ...1094
8. Competent Court ...1095
   (*a*) General Cases ...1095
   (*b*) Small Cause Court Cases ...1097
   (*c*) Revenue Courts ...1097
9. Relief not Granted ...1100

See BENGAL TENANCY ACT, S. 101.

[21 Calc. 378

See BENGAL TENANCY ACT, S. 102.

[21 Calc. 38

[22 Calc. 244

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[18 Mad. 26

See CIVIL PROCEDURE CODE, S. 257A.

[20 Mad. 369

See CASES UNDER ESTOPPEL—ESTOPPEL BY JUDGMENT.

See EXECUTION OF DECREE — DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.

[19 Bom. 258

See FOREST ACT, S. 45.

[24 Calc. 504

[L. R. 24 I. A. 33

See KHOTI SETTLEMENT ACT, S. 17.

[20 Bom. 475

See LIMITATION ACT, 1877, ART. 141.

[21 Calc. 8

[L. R. 20 I. A. 183

See MALABAR LAW—JOINT FAMILY.

[17 Mad. 214

See PAUPER SUIT—SUITS.

[19 Mad. 197

See REMAND—CASES OF APPEAL AFTER REMAND.

[16 All. 252

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[22 Calc. 364

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT.

1.—*Judgment and decree upon an award—Civil Procedure Code* (1882), *ss.* 13 *and* 522.] A judgment and decree passed in terms of an award under s. 522 of the Civil Procedure Code (Act XIV of 1882) constitute a *res judicata*. *Wazeer Mahton* v. *Chuni Singh*. I. L. R. 7 Calc. 727, followed. VYANKATESH CHIMAJI JOSHI *v.* SAKHARAM DAJI.

[21 Bom. 465

2.—*Application by executors for probate—Order refusing probate—Subsequent suit by executors as persons entitled under will to property of deceased—Probate and Administration Act* (*V of* 1881), *s.* 12, *Chap. V, ss.* 59 *and* 83.] The plaintiffs applied to the District Court at Poona under the Probate and Administration Act (V of 1881) for probate of a will of which they were appointed executors. The defendants opposed their application, and on appeal the High Court rejected it, holding that on the evidence the execution of the will was not proved. The plaintiffs thereupon filed the present suit, as the persons beneficially entitled under the will, for a declaration that the property of the deceased belonged to them, and for an injunction to restrain the defendant from obstructing them in the enjoyment of it. The defendant contended that the suit was barred as *res judicata* :—*Held*, that the suit was not barred by the order refusing probate of the will. The refusal to grant probate does not conclusively show that the will propounded is not the genuine will of the testator. GANESH JAGANNATH DEV *v.* RAMCHANDRA GANESH DEV.

[21 Bom. 563

3.—*Decision on title in proceedings under Land Acquisition Act*, 1870.] In proceedings under the Land Acquisition Act, 1870, to apportion the compensation payable, a decision by the Judge on a question of title does not operate a *res judicata* between the parties to those proceedings. MAHADEVI *v.* NEELAMANI.

[20 Mad. 269

4.—*Civil Procedure Code* (1882), *s.* 13—*Proceedings in a prior suit—Fact in issue not heard and "finally decided" therein.*] To support the defence of *res judicata* it is not enough that the parties to the suits are the same, and that the same matter is in issue. The matter must have been heard and finally decided (s. 13 of the Civil Procedure Code). In 1885, relations of a deceased proprietor, alleging their right to the inheritance, sued for a declaration that they were his next of kin. The defendant set up a title as direct descendant, claiming to be the son of that proprietor's daughter. The first Court decided that this was his true parentage, and dismissed the suit. The High Court maintained the dismissal, not upon the merits, but on the grounds that the suit was defective for want of parties, and that a declaratory decree could not be made. In 1888, the same plaintiffs having purchased the interest of the parties not joined in the previous suit, brought the present

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT—*continued.*

suit, with the same object, against the same defendant, whom the Subordinate Judge (not the same officer that disposed of the former suit) now found not to have been the son of the said daughter. A Bench of the High Court (composed of Judges other than those that heard of the former appeal) having examined the record of the former suit, reversed the Subordinate Judge's decision. They declined, however, to decide whether or not the latter suit was barred on the ground of *res judicata*. But intimating that they would have affirmed the judgment of the lower Court in the former suit had it, on the merits, come before them, they preferred that judgment to the one before them, and gave effect to this opinion by reversing the latter:—*Held*, that the question of parentage had not been heard and finally decided in the suit of 1885. The appeal in that suit had put an end to any finality in the decision of the first Court, and had not led to a decision on the merits. There was therefore no *res judicata*: but unless treated as such, the judgment in the former suit had little or no bearing on the question as afterwards put in issue in this. That issue had been rightly decided by the Subordinate Judge, on the evidence, and his judgment was accordingly maintained. SHEOSAGAR SINGH *v.* SITARAM SINGH.

[24 Calc. 616
[L. R. 24 I. A. 50

5.—*Civil Procedure Code* (1882), *s.* 13—*Sivaganga sanad of* 1803—*Fraud—Possession known and acquiesced in prior to adjudication.*] A suit was brought in 1886, grounded on fraud attributed to the lineal ancestor of the principal defendant, in obtaining, in 1803, the grant of the *sanad* of the Sivaganga zemindari, to which the plaintiff claimed title. The plaintiff's case was that the defendant's ancestor, the younger of two brothers, had fraudulently caused the *sanad* to be made out in his own name, whereas it was intended to be, and ought to have been, a grant to the elder brother, who was the plaintiff's lineal ancestor. Those through whom the plaintiff claimed had not made any such charge, although they had knowledge of all the facts connected with the grant of the *sanad* of 1803 to the younger brother, and with the long possession by him and his descendants, among whom there had been litigation, resulting in a decision adverse to the plaintiff's claim as to the ownership. The lower Appellate Court and the High Court both found that the alleged fraud had not been proved:—*Held*, that this suit could not be maintained to re-open the question. BALA GOURI VALLABA TEVAR *v.* PERIASAMI UDAYAR TEVAR.

[17 Mad. 384

S. C. BALA GOURI VALLABHA TEVAR *v.* ZEMINDAR OF SHIVAGANGA.

[L. R. 21 I. A. 93

6.—*Rent, Suit for—Decree as to amount of land—Rent payable for former years—Rate of rent payable.*] The plaintiff sued the defendant for

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT—*continued.*

rent of certain lands. The defendant contended that he was not liable for the entire rent, as part of the land was in the plaintiff's possession. The defendant failed to prove his contention, and a decree was given for the full amount claimed. Subsequently the plaintiff again sued the defendant in regard to the same property for arrears of rent for subsequent years at the rate claimed in the former suit. The defendant had the land measured, adduced evidence, and endeavoured to raise the same defence as he had in the previous suit. No allegation was made to the effect that the rent had been altered in consequence of anything that had happened since the previous decision. The lower Courts, without considering the evidence adduced by the defendant, *held* that the defendant could not again raise the same contention, as the question had already been considered and determined in the previous suit, and was *res judicata* between the parties:—*Held*, that the previous decision did not operate as *res judicata*, and that the lower Courts ought to have determined on the evidence adduced what the amount of rent in question was. NIL MADHUB SARKAR *v.* BROJO NATH SINGHA.

[21 Calc. 236

7.—*Circumstances and evidence to establish existence of trust—Civil Procedure Code, s.* 13.] A claim made for a share of property by inheritance from a deceased relation who had been in joint possession of it with the defendant, was met by the defence that the estate had been jointly held for religious and charitable purposes under a will, the deceased having had no beneficial or heritable interest. The defendant alleged that the original owner of the property had bequeathed the property in trust for these purposes. The claimant alleged a revocation of the will, and denied that there was such a trust. One of the contentions upon this appeal was that the plaintiff was estopped from denying the existence of a trust by there having been a judgment of the High Court, in a prior suit, between the present defendant and the widow of the deceased, that judgment having stated that the trust had been recognised by him who was now defendant:—*Held*, that this was not within s. 13, Civil Procedure Code, the matter not having been tried and determined in that suit:—*Held*, also, that another prior judgment, in a suit brought by others interested in the trust, which judgment found the will to have been revoked, was admissible, though not conclusive, evidence against him. BITTO KUNWAR *v.* KESHO PRASAD MISR.

[19 All. 277

[L. R. 24 I. A. 10

8.—*Judgment obtained by fraud—Failure to appear and resist order granting certificate.*] *P* died in 1889, leaving a daughter *B*. *P*, it was alleged, had made a will appointing certain persons his executors. The executors applied for a certificate under the Succession Certificate Act (VII of 1889) to recover a debt due to the deceased's

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT—*concluded.*

estate from one *N*. *B* opposed this application, and claimed the certificate for herself by a separate application. The District Judge rejected *B's* application, and issued a certificate to the executors on the 14th September, 1892. In the meantime, one *M* obtained a decree against *B* as legal representative of *P*, and in execution bought *P's* right, title and interest in the debt due from *N*. On the 12th September, 1892, *M* applied for a certificate under Act VII of 1889, to recover this debt. The District Judge rejected this application. *M* appealed to the High Court. To this appeal the executors were made parties at their own request. The High Court reversed the District Judge's order and remanded the case for disposal on the merits. Upon the remand the executors did not appear before the District Judge to contest *M's* application, and the District Judge granted him a certificate. Thereupon he applied for revocation of the certificate previously granted to the executors; and the executors in their turn applied for revocation of the certificate granted to him. The District Judge revoked *M's* certificate on the ground that he had fraudulently concealed from the Court the previous grant of a certificate to the executors. Against this order *M* appealed to the High Court, contending (*inter alia*) that the executors not having resisted his application for a certificate after the case had been remanded by the High Court, were estopped, on the principle of *res judicata*, from applying for a revocation of the certificate granted to him:—*Held*, that the executors were not estopped. The executors, having applied to be made parties to the appeal proceedings, were bound to appear in the Court below, and their failure to do so disabled them from pleading objections such as the collusive character of the decree and *B's* want of title, but it did not operate as *res judicata*, especially when there was reason to suspect fraud on the part of *M*. The order obtained by him could not have the effect of *res judicata*, unless the executors being called on to dispute it, had failed to do so. A party to a proceeding is never disabled from showing that a judgment or order has been obtained by the adverse party by fraud. MANCHHARAM *v.* KALIDAS.

[19 Bom. 821

(2) ADJUDICATIONS.

9.—*Award as to partition in prior arbitration proceedings, Effect of—Subsequent suit for partition.*] Disputes having arisen in a joint Hindu family, the parties submitted the question of partition to arbitrators, who passed an award thereon. Both parties objected to the award, and it was never carried into effect. On a suit for partition being filed:—*Held*, that such an award was equivalent to a final judgment and binding on the parties in the absence of positive evidence that both parties agreed that the former state of things should be restored, and that therefore the present suit for partition could not be maintained. KRISHNA PANDA *v.* BALARAM PANDA.

[19 Mad 290

RES JUDICATA—*continued.*

(2) ADJUDICATIONS—*concluded.*

SUBBARAYA CHETTI *v.* SADASIVA CHETTI.

[20 Mad. 490

10.—*Consent decree—Decree dismissing party from suit.*] In 1839, in contemplation of a marriage between *M* and *G*, a deed of settlement was executed which provided that, during the lifetime of *M's* father, half of the rents and profits of two houses in Calcutta, held for a term of years, should be taken by him and half by *G;* that after the death of *M's* father, the rent, and profits should go to *G* and *M*, and upon the death of either of them to the survivor; and after the death of the survivor to the use absolutely of the issue of the marriage, if any. The father of *M* died in 1841, and *G* on the 23rd of November in the same year. *M*, on the 21st December, 1841, shortly after the death of her husband, married *A S*, and, on the 8th of April, 1842, gave birth to a child who was named *E* and afterwards married to *T*. *M* died in 1850. By *A S* she had two children, the plaintiff and a son *G S*. On the 7th November, 1859, *E* and her husband filed a bill of complaint in the Supreme Court, Calcutta, against the trustees of the settlement of 1839, and against *A S* and *G S*, who was then an infant, in which she claimed to be entitled to the properties absolutely. On the 21st of June, 1860, a decree was made dismissing the suit against *G S*, and declaring that the properties covered by the deed of settlement were personalty. In the present suit it was objected that the decree of the Supreme Court could not bind *G S*, as he was dismissed from the suit, and because the decree was a decree by consent:—*Held*, that the decree was binding upon *G S* and persons claiming to derive their title from him. A consent decree is as binding on the parties to the proceedings in which it is made as a decree made after a contentious trial. *In re South American and Mexican Co.*, L. R. (1895) 1 Ch. 37; *The Bellcairn*, L. R. 10 P. D. 161; *Nilakandan* v. *Padmanabha*, I. L. R. 18 Mad. 1; and *Gajapathi Radhika* v. *Gajapathi Nilamani*, 13 Moo. I. A. 497, referred to. NICHOLAS *v.* ASPHAR.

[24 Calc. 216

(3) JUDGMENTS ON PRELIMINARY POINTS.

11.—*Execution under s.* 260, *Civil Procedure Code* (1882)—*Refusal of execution where opportunity to obey the decree had not been afforded by the decree-holders—Effect of such refusal—Subsequent order for execution.*] An order of a Court dismissed a petition for execution under s. 260 of the Civil Procedure Code because the petitioning decree-holders had not then afforded to the judgment-debtor an opportunity of obeying the decree, which directed him to do specific acts:—*Held*, that another application, made after such opportunity had been afforded to him, was not barred as having been matter of prior adjudication within s. 13 of the Civil Procedure Code. KISHORE BUN MOHUNT *v.* DWARKANATH ADHIKARI.

[21 Calc. 784

[L. R. 21 I. A. 89

RES JUDICATA—*continued.*

(3) JUDGMENTS ON PRELIMINARY POINTS—*concluded.*

12.—*Dismissal for default of application for execution of decree—Civil Procedure Code* (1882), *s.* 158—*Civil Procedure Code Amendment Act* (*VI of* 1892), *s.* 4.] The dismissal of a petition for execution for default does not bar a fresh application, s. 158 of the Code of Civil Procedure being inapplicable, since by reason of s. 4 of Act VI of 1892, it does not apply to proceedings in execution. *Dhonkal Singh* v. *Phakkar Singh*, I. L. R. 15 All. 84; *Hajrat Akramnissa Begam* v. *Valiulnissa Begam*, I. L. R. 18 Bom. 429; and *Delhi and London Bank* v. *Orchard*, L. R. 4 I. A. 127, followed. TIRTHASAMI *v.* ANNAPPAYYA.

[18 Mad. 131

13.—*Dismissal of suit for want of heirship certificate—Civil Procedure Code* (1882), *ss.* 13 *and* 158.] In a suit to recover principal and interest due on a bond executed by the defendants in favour of the plaintiff's father (deceased), it appeared that the plaintiff had previously brought a similar suit which was dismissed for the reason that the plaintiff produced no succession certificate:—*Held*, that the previous proceedings did not bar the present suit. *Putali Meheti* v. *Tulja*, I. L. R. 3 Bom. 223, referred to. PETHAPERUMAL CHETTI *v.* MURUGANDI SERVAIGARAN.

[18 Mad. 466

14.—*Dismissal of suit for non-appearance of plaintiff—Order of Mamlatdar dismissing suit—Mamlatdars Courts Act* (*Bombay Act III of* 1876), *s.* 13—*Limitation Act* (*XV of* 1877), *s.* 28, *and Sch. II, Art.* 47.] In 1891, the plaintiff brought this suit to eject the defendant from certain land. In 1883, the defendant's predecessor and vendor, *S*, had sued the plaintiff's tenant, *A*, in the Mamlatdar's Court, alleging that *A* had disturbed his possession by putting sweepings upon the land, and asking to be protected in his enjoyment. He did not appear on the day fixed for hearing, and his suit was dismissed under s. 13 of Bombay Act III of 1876. He did not file a suit to set aside this order of dismissal. It was contended in the present suit now brought by the plaintiff that after three years, by the combined operation of Art. 47 and s. 28 of the Limitation Act (XV of 1877), the defendant's vendor, *S*, had lost his title to the land which thus became vested in the plaintiff:—*Held*, that except as evidence of the plaintiff's title to the land, the proceedings in the Mamlatdar's Court in 1883 and his decree did not affect the present suit in ejectment. As such evidence they were before the lower Court. *Ramchandra* v. *Bhikabai*, I. L. R. 6 Bom. 477, referred to. RAJARAM *v.* GANESH HARI KARKHANIS.

[21 Bom. 91

(4) ORDERS IN EXECUTION OF DECREE.

15.—*Orders as to construction of decree not appealed from—Application for execution by defendant—Objection by plaintiff to continued execution on behalf of defendant.*] Although a

RES JUDICATA—*continued.*

(4) ORDERS IN EXECUTION OF DECREE—*concluded.*

decree does not in terms give a certain relief, yet if it is construed in orders passed upon it as having given that relief, it is not competent to the Court on subsequent applications to treat those orders as erroneous and put another construction on the decree. VENKATANARASIMHA NAIDU *v.* PAPAMMAH.

[19 Mad. 54

16.—*Application for execution of maintenance decree—Previous applications held to be barred by limitation.*] On an application made in 1891 for the execution of a decree passed in 1870, it appeared that the decree directed the payment of maintenance to the plaintiff annually on a specified date, and the present application related to the period of three years from 1888 to 1891. There had been an application for execution in 1873. The next application was made in 1879, and it was dismissed as being barred by limitation:—*Held*, that the question whether the application was barred by limitation was not *res judicata*. KUPPU AMMAL *v.* SAMINATHA AYYAR.

[18 Mad. 482

(5) CAUSE OF ACTION.

17.—*Decree for redemption—Mortgagor's failure to pay amount due within period fixed—Subsequent suit for redemption—Transfer of Property Act (IV of* 1882), *ss.* 92 *and* 93.] A decree under s. 92 of the Transfer of Property Act becomes a final decree on the expiry of the time limited thereby, although no order is passed under s. 93: accordingly, no subsequent suit for redemption can be maintained. RAMASAMI *v.* SAMI.

[17 Mad. 96

18.—*Transfer of Property Act (IV of* 1882), *ss.* 92 *and* 93—*Decretal money not paid within the time limited—Second suit for redemption—Civil Procedure Code* (1882), *s.* 13—*Right of suit—Decree barred by limitation.*] *Held*, that a mortgagor, whether under a simple or a usufructuary mortgage, who has obtained a decree for redemption and allows such decree to lapse by reason of his not paying in the decretal amount within the time limited for payment by the decree, cannot subsequently bring a second suit for redemption of the mortgage in respect of which such infructuous decree was obtained. *Golam Hossein* v. *Alla Rukhee Beebee*, 3 N. W. 62; and *Maloji* v. *Sagaji*, I. L. R. 13 Bom. 567, followed. *Hari Ravji Chiplunkar* v. *Shapurji Hormasji Shet*, I. L. R. 10 Bom. 461, referred to; *Muhammad Samiuddin Khan* v. *Mannu Lal*, I. L. R. 11 All. 386; *Sami Achari* v. *Somasundram Achari*, I. L. R. 6 Mad. 119; *Periandi* v. *Angappa*, I. L. R. 7 Mad. 423; and *Ramunni* v. *Brahma Datton*, I. L. R. 15 Mad. 366, dissented from. HAY *v.* RAZI-UD-DIN.

[19 All. 202

19.—*Second suit for restitution of conjugal rights—Decree not executed—Subsequent voluntary cohabitation followed again by desertion—Satisfaction of decree—Civil Procedure Code* (1882), *s.* 13—*Husband and wife.*] Plaintiff obtained a decree against his wife for restitution of conjugal rights in 1885 which was never executed. In 1887, however, she returned to his house, and stayed with him for two months. She afterwards deserted him again. Thereupon the plaintiff filed a second suit for restitution of conjugal rights:—*Held*, that the suit was not barred under s. 13 of the Code of Civil Procedure (Act XIV of 1882). A second withdrawal from cohabitation constitutes a fresh cause of action. KESHAVLAL GIRDHARLAL *v.* BAI PARVATI.

[18 Bom. 327

20.—*Joint property, Liability of, to sale in execution of decree against one member of a family—Hindu law, Joint family—Civil Procedure Code* (1882), *ss* 278, 280 *and* 283—*Suit for declaration of liability to sale in execution—Limitation—Right of suit.*] In execution of a decree for rent against a lessee, who was one of the members of a joint Hindu family governed by the Mitakshara law, property other than the tenure was attached by the decree-holder. Objection was raised under s. 278 of the Civil Procedure Code by other members, and an order was passed under s. 280 releasing the interest of all members except the lessee. Within one year of the order, the present suit was brought by the decree-holder to bring to sale the whole property, on the ground that all the defendants being members of a joint family were benefited by the lease, and were liable for the decretal money. The defendant pleaded, *inter alia*, that the suit was barred by *res judicata*, and that the suits decreed having been for rents of the years 1884 to 1887, the present suit brought in 1891 against the additional parties was barred by limitation:—*Held* (*per* PRINSEP and GHOSE, JJ.), that the suit would lie, and neither the plea of limitation nor the bar of *res judicata* was applicable to it:—*Held* (*per* PRINSEP, J.)—Sections 278—283 of the Civil Procedure Code contemplate the liability of the property to sale, because of its being the property of the judgment-debtor or because it is liable to the decree passed against him as sued in a representative capacity: they do not contemplate a suit to establish the liability of third persons. *Nuthoo Lall Chowdhry* v. *Shoukee Lall*, 10 B. L. R. 200; 18 W. R. 458; and *Nobin Chandra Roy* v. *Magantara Dassya*, I. L. R. 10 Calc. 923, referred to. *Sitanath Koer* v. *Land Mortgage Bank of India*, I. L. R. 9 Calc. 888, dissented from:—*Held* (*per* GHOSE, J.) that having in view the principle which underlies the cases of *Bissessur Lall Sahoo* v. *Luchmessur Singh*, L. R. 6 I. A. 233; 5 C. L. R. 477; and *Jeo Lal Singh* v. *Gunga Pershad*, I. L. R. 10 Calc. 996; as also the cases of *Sitanath Koer* v. *Land Mortgage Bank of India*, I. L. R. 9 Calc. 888; and *Nobin Chandra Roy* v. *Magantara Dassya*, I. L. R. 10 Calc. 924, the present suit was maintainable; the suit being regarded as one for declaration that the decree was obtained against the lessee in his representative capacity, and that the other members were

RES JUDICATA—*continued.*

(5) CAUSE OF ACTION—*concluded.*

therefore liable to satisfy it. *Nuthoo Lall Chowdhry* v. *Shoukee Lall*, 10 B. L. R. 200; 18 W. R. 458; and *Hemendro Coomar Mullick* v. *Rajendro Lall Moonshee*, I. L. R. 3 Calc. 353, distinguished RADHA PERSHAD SINGH *v.* RAMKHELAWAN SINGH.

[23 Calc. 302

(6) MATTERS IN ISSUE.

21.—*Decision as to genuineness of deed.*] In a suit to establish the plaintiff's right to a standing crop on the basis of his title to the land, it was held that where the plaintiff's title depended upon the genuineness of a *kobala* in respect of the land, a finding with regard to such genuineness is binding as *res judicata* in a subsequent suit between the same parties with regard to the title to the same land, although no issue was distinctly raised in the former suit on the question of genuineness. *Soorjomonee Dayee* v. *Suddanand Mohapatter*, 12 B. L. R. 304; L. R. I. A. Sup. Vol. 212, referred to. DAKHYANI DEBEA *v.* DOLEGOBIND CHOWDHRY.

[21 Calc. 430

22.—*Civil Procedure Code* (1882), *s.* 13, *expl.* 2—*Suit for specific performance of a contract of sale and to execute a sale-deed—Sale-deed subsequently executed by the Court under s.* 262 *of the Civil Procedure Code—Suit on sale-deed to recover possession.*] The plaintiff claiming specific performance of a contract of sale sued the defendant to compel him to execute a deed of sale, alleging that he had paid the purchase-money to the defendant and had obtained possession, but was subsequently dispossessed. The plaintiff had claimed the value of the standing crop or damages for the same. The Court found that the plaintiff had paid the purchase-money, but had not got possession, and ordered defendant to execute a deed of sale. On failure of the defendant to do so, the Court executed a deed of sale in plaintiff's favour under s. 262 of the Civil Procedure Code (Act XIV of 1882). The plaintiff thereupon brought the present suit to recover possession on the strength of the deed of sale. Defendant pleaded that this second suit was barred under s. 13 of the Civil Procedure Code:—*Held*, that the suit was not barred by s. 13, and that expl. 2 of that section was not applicable, because the object of that explanation would seem to be to compel the plaintiff to rely on all grounds which were open to him in support of the claim made by his plaint, which in the first suit was confined to obtaining a regular deed of sale. NATHU PANDU *v.* BUDHU BHIKA.

[18 Bom. 537

23.—*Unnecessary issue—Finding on an unnecessary issue inserted in decree—Civil Procedure Code* (1882), *s.* 13.] The plaintiff attached certain property in execution of a decree obtained by him against one *J*, the widow of one *R*. The defendant *G* intervened and claimed the house as having been purchased by him from one *S*, to whom, he alleged, *J* had sold it before the date of the

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

decree against her. The plaintiff's attachment was removed, and the plaintiff thereupon brought a suit (No. 670 of 1886) to establish his right to sell the house in execution. The Court found that the house was not *J's* and dismissed the suit on that ground, but it also recorded a finding that the sales set up by the defendant were fraudulent and collusive. Subsequently the plaintiff obtained a decree against *M*, the son of *R*, and in execution again attached the house. The defendant again intervened, alleging that the house was his, and the attachment was removed. Thereupon the plaintiff filed this suit to establish his right to sell in execution. The defendant again pleaded that he was owner of the house by reason of the sales set up by him in the former suit. It was argued that these sales had been proved to be collusive and fraudulent in an issue raised in that suit, and that the defence in the present suit was, therefore *res judicata*:—*Held*, that the defence, was not *res judicata*. The former suit had been decided on the finding that the property in question was not *J's*. The finding in that suit on the issue as to the sales to the defendant was not necessary for the determination of the suit. Where an issue is not necessary for the decision of the suit in which it is raised, the decree couched in general terms does not cover the finding on that issue, nor can the insertion of such finding in the decree give it the force of *res judicata*. The Civil Procedure Code does not contemplate findings on issues being inserted in it (see ss. 2 and 6 and Sch. IV), and there is no section in the Code which makes it necessary to appeal from the decree, because such finding has been inserted in it. GHELA ICHHARAM *v.* SANKALCHAND JETHA.

[18 Bom. 597

24.—*Civil Procedure Code* (1882), *s.* 13—*Finding in judgment not embodied in decree and not essential to the making of the decree as framed.*] A finding in a judgment to operate as *res judicata*, the Court being a Court of jurisdiction competent to try the subsequent suit, must be material and necessary to support the precise and particular ground or grounds on which the decree or some operative part of it was made, otherwise the finding must be considered either as superseded by the decree, or as entirely immaterial, or as no more than incidental and subsidiary to the main question in the suit, although in the latter case the finding may have been necessary to the decision of the suit. The finding of fact to operate as *res judicata* need not have been the sole finding of fact upon which the decree was made, but it must have been a material and necessary finding of fact, material and necessary in the sense that the fact must have been found as it was found in the judgment, and could not have been found otherwise, for the decree as it was made to have been a good result in law from the fact or facts so found. Further, if there were two findings of fact, either of which would justify in law the making of the decree which was made, that one of such two findings of fact

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

which should in the logical sequence of necessary issues have been first found, and the finding of which would have rendered the other of such two findings unnecessary for the making of the decree which was made, is the finding which can operate as *res judicata*. A matter cannot be said to be "directly and substantially in issue" within the meaning of the first para. of s. 13 of Act XIV of 1882 unless and until it is, or becomes, material for the decision of the suit to find as to it. The framing of issues under s. 146 of Act XIV of 1882, on which at that stage of the suit the right decision of the case appears to depend, does not of itself make the matter to which such issues relate "directly and substantially in issue" within the meaning of s. 13, although, when the finding upon any one or more of the issues is sufficient for the decision of the suit, it may be desirable that the Court should state in its judgment its finding or decision upon each separate issue which it had framed. The following cases were referred to:—*Krishna Behari Roy* v. *Brojeswari Chowdranee*, L. R. 2 I. A. 283 : I. L. R. 1 Calc. 144; *Soorjomonee Dayee* v. *Suddanand Mohapatter*, 12 B. L. R. 304; L. R. I. A. Sup. Vol. 212; *Run Bahadoor Singh* v. *Luchoo Koer*, I. L. R. 11 Calc. 301; L. R. 12 I. A. 23; *Radha Madhub Holdar* v. *Manohar Mukerji*, I. L. R. 15 Calc. 756; L. R. 15 I. A. 97; *Enaetoollah* v. *Ameer Baksh*, 25 W. R. 225; *Niamut Khan* v. *Phadu Buldia*, I. L. R. 6 Calc. 319; *Jamait-un-nissa* v. *Lutf-un-nissa*, I. L. R. 7 All. 606; *Man Singh* v. *Narayan Das*, I. L. R. 1 All. 489; *Lachman Singh* v. *Mohan*, I. L. R. 2 All. 497; *Ram Gholam* v. *Sheotahal*, I. L. R. 1 All. 266; *Anusuaybai* v. *Sakharam Pandurang*, I. L. R. 7 Bom. 264; *Devarakonda Narasamma* v. *Devakonda Kanaya*, I. L. R. 4 Mad. 134; *Ghela Icharam* v. *Sankalchand Jetha*, I. L. R. 18 Bom. 597; *Tarakant Banerjee* v. *Puddomomoney Dassee*, 10 Moo. I. A. 476; and *Robinson* v. *Dalip Singh*, L. R. 11 Ch. D. 798. SHIB CHARAN LAL *v.* RAGHU NATH.

[17 All. 174

25.—*Civil Procedure Code* (1882), *s.* 13, *expl.* 2—*Dismissal of suit for want of notice, and also upon the merits—Bengal Municipal Act* (*Bengal Act III of* 1884), *s.* 363.] In a suit brought by one *A* against *C* for damages for not removing certain offensive matter from his land, the questions raised were, whether there was notice, and whether the defendant was bound to remove the filth from the plaintiff's property. The Court having found that there was no notice, which in its opinion was a ground sufficient for dismissal of the suit under s. 363 of the Bengal Municipal Act, and also upon the merits, having come to the conclusion that the defendant was not bound to remove the offensive matter from the plaintiff's land, dismissed the suit. In a subsequent suit between the same parties, the plaintiff claiming the same relief as in the previous suit, the defence was that the suit was barred as *res judicata*:—*Held*, that inasmuch as the matter directly and substantially in issue in

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

the subsequent suit, was directly and substantially in issue in the previous suit, and as it was finally heard and decided between the same parties, notwithstanding the fact that the previous suit failed by reason of the decision of the Court upon some other matter as well, the subsequent suit was barred as *res judicata*. *Shib Charan Lal* v. *Raghu Nath*, I. L. R. 17 All. 174, distinguished. PEARY MOHUN MUKERJEE *v.* AMBICA CHURN BANDOPADHYA.

[24 Calc. 900

26.—*Code of Civil Procedure* (1882), *s.* 13, *expln.* 2—*Different subject-matter of suits—Suit for declaration of baradari rights—Subsequent suit for assertion of khadimi rights.*] Section 13, expl. 2 of the Code of Civil Procedure, applies only to cases in which the plaintiff, having on a former occasion sued for certain relief on the strength of one title, afterwards claims the same relief on the ground of another title of which he might have availed himself in the former suit. It does not apply to cases where the subject-matters of the two suits are different. The plaintiffs, in the year 1881, instituted a suit for a declaration of private *baradari* rights in connection with the daily receipts and offerings at a certain Mahomedan place of worship, alleging that the defendants had dispossessed them on the 27th September, 1881; but they did not assert any claim as *khadims*. The suit was decreed; but the decree was reversed on appeal. On the 7th March, 1892, the plaintiffs instituted a suit for a declaration that they were the *khadims* of a certain *durga* and, as such, entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the *durga*. They also claimed an injunction restraining the defendants from interfering with them in the exercise of that office. The plaintiffs claimed their *khadimi* rights partly by inheritance and partly by purchase, a custom of transferability by sale having been long recognised:—*Held*, that the relief claimed in the second suit was not *res judicata*, the subject-matters of the two suits being distinct. *Denobundhoo Chowdhury* v. *Kristomonee Dossee*, I. L. R. 2 Calc. 152; *Woomatara Debi* v. *Unnapoorna Dassee*, 11 B. L. R. 158; *Kameswar Pershad* v. *Rajkumari Ruttan Koer*, I. L. R. 20 Calc. 79; L. R. 19 Calc. 234; *Doorga Pershad Singh* v. *Doorga Konwari*, I. L. R. 4 Calc. 190; L. R. 5 I. A. 149; *Vijaya Raghanadha Bodha* v. *Katama Natchiar*, 11 Moo. I. A. 50; *Soorjoomonee Dayee* v. *Suddanund Mohapatter*, 12 B. L. R. 304; L. R. I. A. Sup. Vol. 212; and *Krishna Behari Roy* v. *Bunwari Lal Roy*, I. L. R. 1 Calc. 144; L. R. 2 I. A. 283, distinguished. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH.

[24 Calc. 83

27.—*Code of Civil Procedure* (1882), *s.* 13—*Landlord and tenant—Suit for rent—Question of title incidentally raised in a previous suit—Subsequent suit for declaration of title to land purchased.*] A suit was brought by *A* against *B* and others

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

for rent; and the matter directly and substantially in issue was as to what the share was for which *A* was entitled to rent. The plaintiff obtained a decree for the whole rent. In a subsequent suit by *B* and others against *A* for declaration of title to land purchased by them in execution of their mortgage decree, the defence was that the former decree for rent operated as *res judicata:—Held*, that as the issue in the rent suit was for what share the plaintiff was entitled to rent, and not to what share of the property was the plaintiff entitled as owner, the question of title could be said to have been in issue in that suit only incidentally and not directly, and it could not have been entertained in the form in which it was now raised; therefore the subsequent suit was not barred as *res judicata*. *Run Bahadur Singh* v. *Lucho Koer*, I. L. R. 11 Calc. 301; L. R. 12 I. A. 23, followed; *Radhamadhub Holdar* v. *Monohur Mukerji*, I. L. R. 15 Calc. 756; L. R. 15 I. A. 97, distinguished; *Nanack Chand* v. *Telukdye Koer*, I. L. R. 5 Calc. 265; and *Dirgopal Lal* v. *Bolakee*, I. L. R. 5 Calc. 269, referred to. SRIHARI BANERJEE *v.* KHITISH CHANDRA RAI.

[24 Calc. 569

28.—*Code of Civil Procedure* (1882), *s.* 13, *expl.* 2—*Suit for rent—Whether the question that the plaintiff was a mere benamidar could be raised in a subsequent suit for rent, it not having been raised in a suit previously brought by the same plaintiff against the same defendant.*] In a previous suit brought by the plaintiff for rent the defendant denied the relationship of landlord and tenant, but he did not plead that the plaintiff was a mere *benamidar*. The plaintiff obtained a decree. In a subsequent suit by the same plaintiff against the same defendant for rent for subsequent years, the defendant, *inter alia*, contended that the plaintiff was a mere *benamidar*. The plaintiff objected that the previous decree was a bar to defendant's contention:—*Held*, that even if the matter in issue might and ought to have been made a defence in the former suit, yet as it was not finally heard and decided by the Court, within the meaning of s. 13 of the Code of Civil Procedure, the defendant was not precluded in this suit from raising the objection that the plaintiff was a mere *benamidar*. KAILASH MONDUL *v.* BARODA SUNDARI DASI.

[24 Calc. 711

29.—*Civil Procedure Code* (1882), *s.* 13, *expl.* 2—*Matter which might have been made ground of attack in a former suit.*] Where a plaintiff sued for possession of immoveable property as owner, having no title as owner, but a possible title as mortgagee, it was *held* that he could not in a subsequent suit between the same parties for possession of the same property claim as mortgagee; inasmuch as his title as mortgagee might have formed an alternative ground of attack in the former suit. *Amolak Ram* v. *Champa Lal*, Weekly Notes, All. (1891), 132; *Mathura Prasad* v. *Sambhar Singh*, Weekly Notes, All. (1892) 224; *Hasan Ali* v. *Siraj Husain*, I. L. R. 16 All. 252; *Atchayya* v. *Bangurayya*, I. L. R. 16 Mad. 117; and *Kameswar Pershad* v. *Rajkumari Rattan Koer*, I. L. R. 20 Calc. 79; L. R. 19 I. A. 234, referred to. IMAM KHAN *v.* AYUB KHAN.

[19 All. 517

30.—*Civil Procedure Code* (1882), *s.* 12—*Suit for money—Application by defendant for an account of dealings with plaintiff—Defendants' right to bring a separate suit for an account.*] In a suit for money the defendant admitted that there had been money dealings between him and plaintiff, but averred that the taking of an account would show that the plaintiff was indebted to him. The Court dismissed the plaintiff's suit, but declined to take an account against the plaintiff:—*Held*, that the defendant was not entitled to have an account taken in the suit, and that Civil Procedure Code, s. 12, would not have precluded him from suing for an account during the pendency of the plaintiff's suit. RAMALINGA CHETTI *v.* RAGHUNATHA RAU.

[20 Mad. 418

31.—*Suits by different partners for specific sums of money on adjustment of accounts—Partnership—Accounts adjusted by Amin appointed in previous suits—Civil Procedure Code, s. 13, expls. 2 and 3, and s. 43—Contract Act, s. 265.*] After dissolution of a certain partnership, two separate suits were brought in 1889 by different partners for specific sums of money due to them, and, in the alternative, for such other amount as might be found due on an adjustment of accounts. Objections were raised against these suits on the grounds, *inter alia* (1) that the suits were barred by the provisions of s. 265 of the Indian Contract Act; (2) that separate suits for the same matter were not maintainable; (3) that the suits would not lie in the Munsif's Court; and (4) that accounts having been already adjusted, there was no cause of action. The Munsif overruled the first three objections, and held, as regards the fourth, that the adjustment pleaded had been ratified by the plaintiffs; he appointed an Amin, who examined the accounts and ascertained the respective claims of the partners, and the plaintiffs in those suits obtained decrees on the basis of the Amin's adjustment of account. The present suits were brought in 1891 by certain other partners, who were defendants in the suits of 1889, on the allegation that the partnership account had been already adjusted by the Amin appointed in the suits of 1889, and that the debts and dues of all parties had been determined by the Court. The plaintiffs prayed for recovery of the amount due to them under the Amin's adjustment, and, in the alternative, for such other relief as might be deemed proper by the Court to grant them against any of the defendants:—*Held* by NORRIS and BANERJEE, JJ. (RAMPINI, J., dissenting)—(*a*) That neither s. 13 nor s. 43 of the Civil Procedure Code was a bar to the present suits, the issue now in suit not having been determined in the former suits:—*Held* by RAMPINI, J.—That there was ground for contending that, under

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*concluded.*

expls. 2 and 3 to s. 13 of the Civil Procedure Code, the present suits were barred. DHANI RAM SHAHA *v.* BHAGIRATH SHAHA.

[22 Calc. 692

32.—*Civil Procedure Code* (1882), *s.* 43—*Ground of defence not raised in previous suit—Relief not asked for in previous suit—Circumstances giving right to such relief not known at date of previous suit—Constructive notice of possession.*] The plaintiffs, who were the junior members of a Malabar *edom* of which defendants Nos. 3 to 5 were the senior members, sued to recover with mesne profits possession of certain property offering to pay the amount of a *kanom* advanced by defendant No. 1. It appeared that the land had been the subject of a *kanom* demise in 1865, that defendant No. 3, the then *karnavan*, had obtained in 1878 a decree for its redemption, the right to execute which he assigned to a stranger, who executed it, and took possession of the property, taking from the *karnavan* a new *kanom* deed. Subsequently defendants Nos. 4 and 5 obtained a decree for possession and the cancellation of both the assignment and the *kanom* deed; but this decree was attached in execution proceedings in another suit and purchased by defendant No. 1, who executed it, purchased the property, deposited the *kanom* amount, and took possession on the 8th March, 1884. The plaintiffs, who had meanwhile taken abortive proceedings to defeat the first defendant's title, instituted a suit in August, 1884, praying for a decree that the sale to him be set aside without praying for possession. It was now found that the plaintiffs at that time were not aware that defendant No. 1 was in possession, and he did not plead that fact as a defence to the suit for a declaration merely:—*Held*, that the plaintiffs were not affected by constructive notice of the defendant's possession in 1884 by reason of the fact that their *karnavan*, with whom they were not acting, was aware of the defendant's previous application for execution, and that the suit was not barred by the Civil Procedure Code, s. 43. *Semble:* That, apart from the question of the plaintiffs' notice of the first defendant's possession, since he had not pleaded possession in the suit of 1884, he could not fall back upon the fact that his possession dated from March, 1884, as a ground of defence to the present action. SANKARAN *v.* PARVATHI.

[19 Mad. 145

(7) PARTIES.

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES.

33.—*Civil Procedure Code* (1882), *s.* 13—*Estoppel—Privity between execution-creditor and purchaser at sale in execution of decree.*] Where all the conditions prescribed by s. 13 of the Code of Civil Procedure as necessary to bar the trial in a subsequent suit of an issue adjudicated upon in a previous suit exist, the fact that in the first suit the defendant was an execution-creditor, and in the second he is a purchaser at an execution sale makes no difference as to the second suit being *res judicata*. A privity exists between an execution-creditor and a purchaser at a Court-sale, the latter representing the former in so far as he had a right to bring the property to sale in execution of his decree. Thus, when the plea of estoppel is available to a decree-holder, it is likewise available to the purchaser at the execution sale, as his representative or as one claiming under him. *Sarat Chunder Dey* v. *Gopal Chunder Laha*, I. L. R. 20 Calc. 296; L. R. 19 I. A. 203, followed. KRISHNABHUPATI DEVU *v.* VIKRAMA DEVU.

[18 Mad. 13

34.—*Decree-holders in case of claim to attached property—Civil Procedure Code* (1882), *ss.* 278 *and* 283—*Effect of order under s.* 278.] An order in favour of one of several decree-holders on an objection under s. 278 of the Code of Civil Procedure does not enure for the benefit of other decree-holders who are not parties to the proceedings under s. 278. *Badri Prasad* v. *Muhammad Yusuf*, I. L. R. 1 All. 382, referred to. JAGAN NATH *v.* GANESH.

[18 All. 413

(*b*) CO-DEFENDANTS.

35.—*Plaintiff and defendants co-defendants in former suit decreed against them ex parte.*] In a suit to recover the plaintiff's share of lands appertaining to an *agraharam* the defendants pleaded that the lands in question were their own and were not subject to partition. It appeared that in a previous suit brought by a third party against the present plaintiff and defendants and others to recover his share of the *agraharam* lands, it was held that the lands now in question formed part of the lands of the *agraharam*, and they were divided in execution of the decree in that suit. Against the present plaintiff that suit was decreed *ex parte*:—*Held*, that the defendants were precluded under the Civil Procedure Code, s. 13, from raising the above plea. LATCHANNA *v.* SARAVAYYA.

[18 Mad. 164

36.—*Party through whom plaintiff claimed, and defendant, co-defendants in former suit.*] In a suit for land the plaintiff claimed under a conveyance executed to him by defendant No. 1. The property had previously belonged to the father, since deceased, of the first defendant's wife, and her sister, defendant No. 2. Shortly after the father's death a suit for maintenance was brought by his sister-in-law against his widow and two daughters, in which the then defendants alleged that the property now in question had been given by him to the wife of the plaintiff's vendor, and the Court recorded a finding that the gift was valid. Defendant No. 2 now raised a plea that the gift to her sister had not been accompanied by possession and was invalid, and she asserted title in herself under the will of her mother, under which title she had been in possession for

RES JUDICATA—*continued.*

(7) PARTIES—*concluded.*

(*b*) CO-DEFENDANTS—*concluded.*

ten years:—*Held*, that the second defendant was not precluded by the proceedings in the former suit, in which defendant No. 2 and the wife of defendant No. 1 had been co-defendants, from raising the plea above referred to. RAMANUJA AYYANGAR *v.* NARAYANA AYYANGAR.

[18 Mad. 374

37.—*Parties to subsequent suit arrayed on the same side as co-defendants in previous suit—Necessary adjudication between co-defendants—Civil Procedure Code* (1882), *s.* 13.] Where an adjudication between the defendants is necessary to give the appropriate relief to the plaintiff, there must be such an adjudication, and in such a case the adjudication will be *res judicata* between the defendants as well as between the plaintiff and the defendants. But for this effect to arise there must be a conflict of interests amongst the defendants and a judgment defining the real rights and obligations of the defendants *inter se*. Without necessity the judgment will not be *res judicata* amongst the defendants. *Ram Chandra Narayan* v. *Narayan Mahadev*, I. L. R. 11 Bom. 216, followed; *Cottingham* v. *Earl of Shrewsbury*, 3 Hare, 627, referred to. AHMAD ALI *v.* NAJABAT KHAN.

[18 All. 65

38.—*Proceedings in former case not between same parties—Admissibility in evidence of finding in former case.*] *S* granted to *G* and *A* a *patni* of a certain share in a zemindari, and thereupon *P* brought a suit against *G*, *S* and *A* for specific performance of an agreement to grant to him (*P*) a *patni* of the same share. That suit was decreed with costs, the whole of which were realised from *G*. In a suit for contribution brought by *G* against *S* and *A*, the lower Appellate Court found that *G*, *S* and *A* had conspired in setting up a false defence in the former suit in order to defeat *P's* claim. The only evidence on which the lower Appellate Court had acted as establishing such collusion was the finding of the Court in the former suit (gathered from the grounds of appeal in that suit):—*Held*, that that finding was inadmissible in evidence, as laid down in *Surender Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdhry*, I. L. R. 13 Calc. 352, being the finding in a case in which *G*, *S* and *A* were all co-defendants, and a third party the plaintiff; and the case was remanded for the determination of the question whether *G*, *S* and *A* were wrong-doers, and were as such held liable for the costs of the former suit. GOBIND CHUNDER NUNDY *v.* SRIGOBIND CHOWDHRY.

[24 Calc. 330

(8) COMPETENT COURT.

(*a*) GENERAL CASES.

39.—*Civil Procedure Code* (1882), *s.* 13—*Court of "competent jurisdiction."*] The term "competent jurisdiction" in s 13 of the Civil Procedure Code has regard to the pecuniary limit as well as to the subject-matter. There is no authority for the general proposition that the competency of one Court as compared with another is affected by the circumstance that in the one case an appeal lies in the first instance to the District Court and in the other directly to the High Court. *Misir Raghobardial* v. *Sheo Buksh Singh*, I. L. R. 9 Calc. 439, cited and followed; *Vithilinga Padayachi* v. *Vithilinga Mudali*, I. L. R. 15 Mad. 111, qualified. SUBBAMMAL *v.* HUDDLESTON.

[17 Mad. 273

40.—*Civil Procedure Code* (1882), *s.* 13—"*Court of jurisdiction competent to try such subsequent suit.*"] The words "a Court of jurisdiction competent to try," as used in s. 13 of the Code of Civil Procedure, mean a Court having jurisdiction not only as to the nature but also as to the amount of the suit. *Misir Raghobar Dial* v. *Sheo Bakhsh Singh*, I. L. R. 9 Calc. 439; L. R. 9 I. A. 197, referred to. HASSU *v.* RAM KUMAR SINGH.

[16 All. 183

41.—*Civil Procedure Code* (1882), *s.* 13—*Jurisdiction of Munsif.*] Defendants, against whom the District Munsif had wrongly passed a decree in 1877 in a suit in a mortgage of certain land, were held to be not precluded from the right to have their shares in the land exonerated in a subsequent suit relating to the same mortgage which the District Munsif has no jurisdiction to try. BADI BIBI SAHIBAL *v.* SAMI PILLAI.

[18 Mad. 257

42.—*Civil Procedure Code* (1882), *s.* 13—*Court of competent jurisdiction.*] In a suit for arrears of rent brought against *A* in a Munsif's Court, *B* intervened as a defendant, alleging that he and not *A* was the true tenant in possession. *B* succeeded in the first Court, but on appeal it was decided that *B* had no right in or possession of the tenure. In a second suit for arrears of rent brought against *A*, the tenure was sold in execution of decree, and the landlords purchased and took possession of it. *B* brought the present suit (valued at more than Rs. 1,000) in the Court of the Subordinate Judge for declaration of his right and recovery of possession. The lower Court of Appeal held that the decision in the former suit, in which *B* intervened, operated as *res judicata* upon the question of title raised in the present suit, and in support of that decision, it was contended that the word "suit" in s. 13 of the Civil Procedure Code included an appeal, and that as the District Judge who tried the appeal in the former suit had jurisdiction to try the present suit, and it was the decision of that Court which was pleaded in bar, the defence on the ground of *res judicata* was good and valid:—*Held*, that the contention was not right, and the present suit was not barred by *res judicata*, the former suit having been brought in a Court which was not a Court of jurisdiction competent to try

RES JUDICATA—*continued.*

(8) COMPETENT COURT—*continued.*

(*a*) GENERAL CASES—*concluded.*

the present suit. *Run Bahadur Singh* v. *Lucho Koer*, I. L. R. 11 Calc. 301; L. R. 12 I. A. 23, followed; *Misir Raghobardial* v. *Sheo Baksh Singh*, I. L. R. 9 Calc. 439; L. R. 9 I. A. 197; *Toponidhee Dhirj Gir Gosain* v. *Sreeputty Sahanee*, I. L. R. 5 Calc. 832; *Pathuma* v. *Salimamma*, I. L. R. 8 Mad. 83, referred to. BHARASI LAL CHOWDHRY *v.* SABAT CHUNDER DASS.

[23 Calc. 415

(*b*) SMALL CAUSE COURT CASES.

43.—*Decree in suit of small cause nature—Subsequent suit for declaration of title and to set aside agreement—Civil Procedure Code* (1882), *s.* 13.] The plaintiff, claiming to be entitled together with two of the defendants to the office of *archaka* of a temple, sued in 1889 for a declaration of his title, and for a declation that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. The defendants pleaded that the validity of the agreement was *res judicata* for the reason that they had brought a previous action upon it against the plaintiffs, and had obtained a decree for Rs. 75:—*Held*, that the validity of the agreement was not *res judicata*, because the previous suit was of a small cause nature. SRIRANGACHARIAR *v.* RAMASAMI AYYANGAR.

[18 Mad. 189

NAMASIVAYA GURUKKAL *v.* KADIR AMMAL.

[17 Mad. 168 (179)

(*c*) REVENUE COURTS.

44.—*Former suit under Madras Rent Recovery Act* (*Madras Act VIII of* 1865)—*Jurisdiction of Revenue Court—Question of title.*]—In a suit for land it appeared that the defendant had obtained, under the Madras Rent Recovery Act, a judgment that the present plaintiff should accept from him a *pottah* for the land in question and deliver to him a corresponding *muchalka*, and subsequently an order for ejectment, which was executed. The present plaintiff did not appear when the above orders were made. The defendant relied on these proceedings as constituting a bar to the present suit:—*Held*, following *Harika Ramayyar* v. *Sunder Tirtasami*, I. L. R. 7 Mad. 61, that the decision of the Revenue Court was no bar to the suit. GANGARAJU *v.* KONDIREDDISWAMI.

[17 Mad. 106

45.—"*Court of jurisdiction competent to try the suit in which such issue has been subsequently raised*"—*N.-W. P. Land Revenue Act* (*XIX of* 1873), *ss.* 113 and 114—*Civil Procedure Code* (1882), *s.* 13—*Mortgage—Foreclosure—Suit for redemption.*] One *H S* mortgaged in 1864, by two mortgages of the same date, certain immoveable property to one *A S*. In 1877, *A S* applied for foreclosure of these mortgages and

RES JUDICATA—*continued.*

(8) COMPETENT COURT—*continued.*

(*c*) REVENUE COURTS—*continued.*

obtained an order under s. 8 of Regulation XXVII of 1806, but these proceedings were, it was alleged, never brought to a legal conclusion. Subsequently, the mortgagee applied in a Court of Revenue for partition in his favour of the mortgaged property. The mortgagor resisted that application on the ground that the foreclosure proceedings had not been completed; but the Court, acting under ss. 113 and 114 of Act XIX of 1873, overruled that objection and granted partition in favour of the mortgagee. In 1892 the mortgagor sued the representatives of the original mortgagee in a Civil Court for redemption of the mortgages of 1864. The defendants resisted the suit principally on the plea that s. 13 of Act XIV of 1882 applied and was a bar to the suit; but no plea of *res judicata* outside s. 13 was raised. The plaintiff's suit was dismissed as stated by the principle of *res judicata*. The plaintiff appealed:—*Held* by TYRRELL, J., that, the Court of Revenue being incompetent to determine the suit in which the issue whether the mortgages had been foreclosed or not was subsequently raised, s. 13 of Act XIV of 1882 did not apply, and no plea of *res judicata* outside s. 13 could be entertained, inasmuch as no such plea had been put forward in the Court below or in the High Court. *Misir Raghobar Dial* v. *Sheo Baksh Singh*, I. L. R. 9 Calc. 439, referred to. *Per* BURKITT, J., *contra*—The provisions of s. 13 of Act XIV of 1882 are not exhaustive, and the plaintiff not having appealed therefrom the decision of the Court of Revenue must be held, upon the principle of *res judicata*, to be a bar to the present suit. *Ram Lal* v. *Chhab Nath*, I. L. R. 12 All. 578; and *Ram Kirpal* v. *Rup Kuari*, I. L. R. 6 All. 269, referred to. HAR CHARAN SINGH *v.* HAR SHANKAR SINGH.

[16 All. 464

Held in the same case by KNOX, BLAIR and BANERJI, JJ., on appeal under the Letters Patent, that where a Court of Revenue, acting under s. 113 of Act XIX of 1873, has decided a question of title or of proprietary right, such decision, being the decision of "a Court of Civil Judicature of first instance," will operate as *res judicata* in a subsequent civil suit in which the same question is being litigated. HAR CHARAN SINGH *v.* HAR SHANKAR SINGH.

[18 All. 59

46.—*Order of Settlement Officer fixing rate of rent—Bengal Tenancy Act* (*VIII of* 1885), *s.* 104, *cls.* 2, *and* 3; *and* 3, *ss.* 107—*Civil Procedure Code* (1882), *s.* 13—*Objection—Dispute.*] Where a Settlement Officer of his own motion settled what appeared to him to be a fair and equitable rent in respect of the lands held by the plaintiffs and other tenants under s. 104, cls. 2 and 3 of the Bengal Tenancy Act, and the plaintiffs preferred an objection under s. 105, cl. 1, to certain entries in the record enhancing their rents, on the ground that their rents were not liable to

RES JUDICATA—*continued.*

(8) COMPETENT COURT—*continued.*

(*c*) REVENUE COURTS—*continued.*

be enhanced, which objection was disallowed and the record finally published under s. 105 (2):—*Held*, that the proceedings of the Settlement Officer were of an executive, rather than of a judicial, character, and did not operate either as a *res judicata* under s. 13 of the Code of Civil Procedure, or as a final decree under s. 107 of the Bengal Tenancy Act, estopping the plaintiffs from having the same matters tried by the regular Civil Court. The words "objection" and "dispute" in ss. 105 and 106 of the latter Act are not synonymous terms. SECRETARY OF STATE FOR INDIA *v.* KAJIMUDDY.

[23 Calc. 257

47.—*N.-W. P. Rent Act* (*XII of* 1881), *ss.* 36, 39, 95 (*e*) *and* 96 (*b*)—*Suit in a Civil Court for a declaration on a question of title decided by a Court of Revenue under s.* 39 *of Act XII of* 1881—*Jurisdiction of Civil and Revenue Courts.*] The defendants served a notice of ejectment under s. 36 of 'Act XII of 1881 on the plaintiffs, alleging the plaintiffs to be their subtenants and themselves to be tenants with a right of occupancy. The plaintiffs objected that they, and not the defendants, were the tenants in chief of the land in question. This objection was decided, under s. 39 of the said Act, by a Court of Revenue adversely to the plaintiffs. The plaintiffs thereupon sued in a Civil Court for a declaration that they were tenants with a right of occupancy and for maintenance of possession:—*Held* that, inasmuch as s. 96 (*b*) of Act XII of 1881 gave to a decision of a Court of Revenue under s. 39 the effect of a judgment of a Civil Court, the hearing of the plaintiffs' present suit by a Civil Court was barred. The principle of the decision in *Tarapat Ojha* v. *Ram Ratan Kuar*, I. L. R. 15 All. 387, affirmed. The jurisdiction of Civil Courts and Courts of Revenue in the North-Western Provinces considered. SHEO NARAIN RAI *v.* PARMESHAR RAI.

[18 All. 270

48.—*Transfer of Property Act* (*IV of* 1882), *s.* 99—*Sale by a Court of Revenue in contravention of s.* 99—*Subsequent suit for partition in a Civil Court based upon rights acquired under such sale*—*Co-sharers.*] A Court of Revenue in execution of a decree for rent sold the mortgagor's interest in a certain house which had been mortgaged together with other property, and the sale was upheld on appeal to the Board of Revenue. Subsequently the auction-purchaser at the sale above referred to sued in a Civil Court for partition of the share purchased by him:—*Held*, that the co-sharers in the property in question could not dispute the validity of the sale, notwithstanding that the decree and the sale in pursuance thereof were in direct violation of s. 99 of Act IV of 1882. TARA CHAND *v.* IMDAD HUSAIN.

[18 All. 325

RES JUDICATA—*continued.*

(8) COMPETENT COURT—*concluded.*

(*c*) REVENUE COURTS—*concluded.*

49.—*Civil Procedure Code* (1882), *s.* 13—*Decision of Revenue Court.*] A zemindar distrained for rent under the Rent Recovery Act of 1865. Thereupon the tenant filed a summary suit under that Act in a Revenue Court, and the distraint was annulled on the ground that the zemindar had not tendered a proper *pottah* as required by s. 7. The zemindar now sued in the Court of the District Munsif to recover the arrears of rent:—*Held*, that the question of the propriety of the *pottah* tendered was not *res judicata*. RANGAYYA APPA RAU *v.* RATNAM.

[20 Mad. 392

(9) RELIEF NOT GRANTED.

50.—*Dismissal of suit without leave to bring fresh suit—Civil Procedure Code, s.* 373—*Withdrawal of suit.*] Explanation 3 of s. 13 of the Civil Procedure Code contemplates a decree which does not expressly grant the relief claimed: the termination of a suit by the plaintiff being allowed to withdraw it, without leave to bring a fresh one, is not a bar, under expl. 3, to a subsequent suit in which the same matter is in issue. KAMINI KANT ROY *v.* RAM NATH CHUCKERBUTTY.

[21 Calc. 265

51.—*Suit for possession and mesne profits—Ex-parte decree for possession without mention of mesne profits—Subsequent suit for same mesne profits and for subsequent mesne profits—Civil Procedure Code* (1882), *s.* 13.] A suit was instituted for recovery of possession and for mesne profits. An *ex-parte* decree for possession only was made, but that decree was silent as regarded the mesne profits. Subsequently a second suit was instituted for the same mesne profits as well as for mesne profits for a subsequent period:—*Held*, that the claim for mesne profits prior to the institution of the first suit was barred under s. 13 of the Civil Procedure Code. JIBAN DAS OSWAL *v.* DURGA PERSHAD ADHIKARI.

[21 Calc. 252

52.—*Dismissal of application to set aside ex-parte decree and sale in execution on ground of fraud—Right to bring suit for same purpose without appealing against order—Effect of not appealing against an appealable order—Civil Procedure Code* (1882), *ss.* 13, 108, 244 *and* 311.] The plaintiff having applied unsuccessfully under ss. 108 and 311 of the Civil Procedure Code to set aside an *ex-parte* decree against him and the sale of his property in execution thereof on the ground of fraud, and without preferring an appeal against the order rejecting his said application under s. 108 of the Code, instituted this suit praying for the same relief. The Subordinate Judge dismissed the suit as not maintainable:—*Held*, that such a suit was maintainable, and that ss. 13 and 244 of the Civil Procedure Code were no bar thereto. The facts that his application under s. 108 was unsuccessful, and

RES JUDICATA—*concluded.*

(9) **RELIEF NOT GRANTED**—*concluded.*

that he did not appeal against the order rejecting that application, did not disentitle him from prosecuting his remedy by suit on the ground of fraud. *Abdul Mazumdar* v. *Mohomed Gazi Chowdhry*, I. L. R. 21 Calc. 605, approved:—*Held*, also, that when there is an appeal against a decision, the effect of not appealing is that the decision holds good for what it is worth; so far as concerns any other modes of relief available, the person not appealing is in no worse position than if he had appealed and failed. *Raj Kishen Mookerjee* v. *Modhoo Soodun Mundle*, 17 W. R. 413, distinguished. PRAN NATH ROY *v.* MOHESH CHANDRA MOITRA.

[24 Calc. 546

RESOLUTION OF GOVERNMENT.

See COLLECTOR.

[18 Bom. 103

RESPONDENT.

See COSTS—SPECIAL CASES—RESPONDENTS.

[20 Bom. 167

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

[16 All. 5

[19 Mad. 151

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.

[18 All. 86, 285

——, Costs of.

See PRIVY COUNCIL, PRACTICE OF—COSTS.

[L. R. 24 I. A. 191

[25 Calc. 137

——, Notice to.

See PRIVY COUNCIL, PRACTICE OF—REHEARING.

[19 All. 209

[L. R. 24 I. A. 49

——, Objection by.

See APPEAL — OBJECTIONS BY RESPONDENT.

[17 All. 518

See PRIVY COUNCIL, PRACTICE OF—OBJECTIONS BY RESPONDENT.

[23 Calc. 922

RESTITUTION OF CONJUGAL RIGHTS.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[18 Bom. 316

RESTITUTION OF CONJUGAL RIGHTS—*concluded.*

——, Second suit for.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[18 Bom. 327

See RES JUDICATA—CAUSE OF ACTION.

[18 Bom. 327

1.—*Plea of impossibility of sexual intercourse—Legal defences to suit for restitution—Discretion of Judge to refuse decree except when legal plea is proved—Husband and wife.*] A plea by a wife that sexual intercourse with her is impossible owing to her incurable disease or physical malformation is not in itself a good defence to a suit by the husband for restitution of conjugal rights. A Judge has no discretion to refuse a decree for restitution of conjugal rights for other causes than those which in law justify a wife from refusing to return to live with her husband, and he cannot abstain from passing a decree in favour of a plaintiff-spouse, because he considers that it would not be for the benefit of either side that the decree should be granted. *Dadaji* v. *Rukhmabai*, I. L. R. 10 Bom. 301, followed. Where therefore the lower Appellate Court found that there was no cruelty, but that the suit was brought by the husband as a counter-move to defeat the claim of his wife for separate maintenance, and a considerable time after she had ceased to live in his house, and because on the last occasion when she returned to live with him she left the house crying:—*Held*, that these circumstances were not sufficient in law to justify the Court in refusing the husband's claim for restitution of conjugal rights. PURSHOTAMDAS MANEKLAL *v.* BAI MANI.

[21 Bom. 610

RESTITUTION OF RIGHTS BY MOTION.

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—GENERALLY.

[20 Mad. 448

1.—*Execution pending appeal of decree set aside on appeal—Restitution of rights by motion where the appellate decree does not mention restitution—Civil Procedure Code* (1882). *s.* 583.] Where a decree made by a Court of first instance is executed pending an appeal, and on appeal such decree is set aside, the appellant is entitled by motion to obtain restitution, even though the decree of the Court of Appeal is silent as to such restitution. *A*, the owner of a 15 odd pie share of certain indigo land, brought a suit for partition against his co-sharer *B*, the owner of the rest of the land, and obtained a decree, from which *B* appealed. *A*, without waiting for the disposal of the appeal, executed his decree and obtained possession of his share, settling it with tenants. The decree was subsequently set aside on *B's* appeal, but no order as to restitution was made in it:—*Held*, on motion by *B*, that he was

RESTITUTION OF RIGHTS BY MOTION—*concluded.*

entitled to be put into the same position as before the partition was made (*i.e.*, joint possession with *A*) and to remove any tenants who refused to vacate. ROHNI SINGH *v.* HODDING.

[21 Calc. 340

2.—*Restitution of an advantage obtained by virtue of a decree of High Court subsequently reversed on appeal to Privy Council—Civil Procedure Code* (1882), *s.* 583—*Right of suit—Parties, Non-joinder of.*] The holder of a decree of the High Court for costs assigned his rights under that decree. The assignee caused his name to be brought on to the record as transferee in place of the decree-holder, and he, and after him his legal representative, executed the decree against the judgment-debtor. The decree was appealed to the Privy Council, but the assignee was not a party to the record in that Court. The Privy Council reversed the decree. Thereupon the successful plaintiff applied under s. 583 of the Code of Civil Procedure to obtain restitution from the representative of the assignee of the amount realised in execution of the decree of the High Court:—*Held*, that, whether or not the amount realised by the assignee was recoverable by suit, it was not recoverable by proceedings under s. 583 of the Code, inasmuch as the assignee was no party to the decree of the Privy Council. BHAGWATI PRASAD *v.* JAMNA PRASAD.

[19 All. 136

RESUMPTION.

See SERVICE TENURE.

[22 Calc. 938
[19 Mad. 100

REVENUE.

See APPEAL—N.-W. P. ACTS.

[18 All. 302

——, Assessment of.

See BOMBAY LAND REVENUE ACTS, S. 216.

[18 Bom. 525

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

See MADRAS LAND REVENUE ASSESSMENT ACT, S. 2.

[19 Mad. 292, 305

——, Default in payment of.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[20 Bom. 747

——, Deposit of.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

[17 Mad. 247

REVENUE—*concluded.*

——, Payment of.

See MONEY PAID FOR BENEFIT OF ANOTHER

[21 Calc. 142
[L. R. 20 I. A. 160
[18 All. 471

REVENUE COURT.

——, Jurisdiction of.

See JURISDICTION OF REVENUE COURT.

[17 Mad. 140

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

——, Order of.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

[18 All. 437
[19 All. 101

——, Suit in.

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

See WITHDRAWAL OF SUIT.

[22 Calc. 418, 514

REVENUE OFFICER.

See BENGAL TENANCY ACT, S. 102.

[21 Calc. 38

See BOMBAY LAND REVENUE ACT, S. 3.

[20 Bom. 803

See BOMBAY REVENUE JURISDICTION ACT, S. 11.

[20 Bom. 803

——, Decision of.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 462

REVERSIONERS.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[23 Calc. 454

See CASES UNDER HINDU LAW—REVERSIONERS.

See CASES UNDER LIMITATION ACT, ART. 141.

——, Interest of.

See INSOLVENT ACT, S. 7.

[21 Bom. 319

REVERSIONERS—*concluded.*

——, Liability of.

See HINDU LAW—ALIENATION — ALIENATION BY WIDOW — ALIENATION FOR LEGAL NECESSITY.

[19 All. 300

See MONEY PAID FOR BENEFIT OF ANOTHER.

[18 All. 471

—— Suit by.

See DECLARATORY DECREE, SUIT FOR—REVERSIONERS.

[20 Bom. 202

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY.

[22 Calc. 506

See LIMITATION ACT, ART. 141.

[20 Bom. 801
[21 Bom. 376
[20 Mad. 493
[19 All. 357

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[22 Calc. 445
[L. R. 22 I. A. 25

——, Suit by, Court-fees on.

See VALUATION OF SUIT—SUITS.

[18 Mad. 459

REVIEW—CIVIL CASES.

1. Form of, and Procedure on, Application ... *Col.* 1106
2. Power to Review ... 1106
3. Ground for Review ... 1109

——, Application for.

See LIMITATION ACT, s. 5.

[18 Bom. 84

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.

[18 All. 285

——, Order granting.

See APPEAL—ORDERS.

[22 Calc. 3, 734, 984
[18 All. 44
[21 Bom. 328
[24 Calc. 878

——, Order setting aside order granting.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[24 Calc. 319, 319 note

REVIEW—CIVIL CASES—*continued.*

——, Power of.

See RECEIVER.

[21 Bom. 328

——, Right of.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[16 All. 390

(1) FORM OF, AND PROCEDURE ON, APPLICATION.

1.—*Application for review—Copy of judgment, decree or order sought to be reviewed—Civil Procedure Code* (1882), *ss.* 541 *and* 625—*Limitation Act* (*XV of* 1877), *s.* 12.] It is not necessary that an application for review of judgment should be accompanied by a copy of the decree, order, or judgment sought to be reviewed. WAJID ALI SHAH *v.* NAWAL KISHORE.

[17 All. 213

(2) POWER TO REVIEW.

2.—*Power of Judge to review order made in course of liquidation of company—Companies Act* (*VI of* 1882), *s.* 169.] Section 169 of Act VI of 1882 is not intended to refer to a case in which a Judge upon the discovery of fresh matter considers it expedient to pass a fresh order or to review an order passed by him. *In re The National Assurance and Investment Association; Ex parte Munday*, 31 Beav. 206, referred to. MUSSOORIE BANK *v.* HIMALAYA BANK.

[16 All. 53

3.—*Public Demands Recovery Act* (*Bengal Act VII of* 1880)—*Bengal Act VII of* 1868—*Order of Revenue Commissioner setting aside sale—Review of order setting aside sale.*] A revenue-paying *taluk* was sold for arrears of *dâk* cess under the Public Demands Recovery Act. The sale was set aside on appeal by the Revenue Commissioner, but on an application for review made to his successor, the sale was confirmed, and the purchaser took possession. In a suit to recover possession of an 8 annas share of the *taluk* on the grounds, among others, that the order, on review, was passed without jurisdiction and without notice to the plaintiffs, and as such conferred no title on the purchaser, the District Judge, on appeal, held that the order on review not having been set aside remained in force, but he remanded the case under s. 566 for trial of the question of notice. On the case coming back to the Appellate Court, before another Judge, he held the order on review to be *ultra vires*, and the trial of the question of notice to be unnecessary. The defendants preferred a second appeal against the last judgment:—*Held*, that the provisions of the Code of Civil Procedure relating to reviews of judgment were not extended to proceedings under Bengal Acts VII of 1868 and VII of 1880, and that, in the present case, the order passed on review, confirming the sale, was *ultra vires* and of no effect. LALA PRYAG LAL *v.* JAI NARAYAN SINGH.

[22 Calc. 419

REVIEW—CIVIL CASES—*continued.*

(2) POWER TO REVIEW—*continued.*

4.—*Application for re-admission of appeal dismissed on failure to deposit costs of paper book—High Court Rules, Part II, Chap. VIII, Rule 17—Civil Procedure Code* (1882), *s.* 627.] The appellant in an appeal from an original decree having failed to deposit the estimated amount of costs for the preparation of the paper book, the appeal was dismissed under Rule 17 of the High Court Rules, Part II, Chap. VIII. An application for re-admission of the appeal was then made on behalf of the appellant; and a rule granted by a Division Bench calling upon the opposite side to show cause. *Held* (by PETHERAM, C. J., and PRINSEP and GHOSE, JJ., reversing the decision of BEVERLEY, J.), that the matter before the Court was not an application for review of judgment, and could not be disposed of by a single Judge of the High Court under s. 627 of the Civil Procedure Code. RAMHARI SAHU *v.* MADAN MOHAN MITTER.

[23 Calc. 339

5.—*Order dismissing appeal for default in depositing costs of paper book—High Court Rules, Part II, Chap. VIII, Rule 17—Procedure to set aside order—Civil Procedure Code* (1882), *ss.* 623 *and* 626.] A decree of a Division Bench of the High Court, dismissing an appeal for default in depositing the estimated costs of preparation of the paper book under Rule 17 of the High Court Rules, Part II, Chap. VIII, can only be set aside by an order under s. 626 of the Civil Procedure Code (Act XIV of 1882). *Ramhari Sahu* v. *Madan Mohan Mitter*, I. L. R. 23 Calc. 339, so far as it decides the contrary, is wrongly decided. FATIMUNNISSA *alias* KANEZ FATIMA *v.* DEOKI PERSHAD.

[24 Calc. 350

6.—*Decree properly made against minor—Right of minor to impeach decree on attaining majority—Form of decree against minor—Practice—Procedure.*] A testator in his will directed his daughter-in-law *L* (defendant No. 1) to adopt his nephew *K* (defendant No. 2), and he devised the residue of his estate to him. The executors of the will subsequently brought this suit to have the will construed and the rights of *K* in the testator's estate ascertained and declared. A decree was made on the 1st October, 1887, by which it was declared that *K's* adoption was a condition precedent to his inheritance, and that unless he was adopted, he was not entitled to any part of the testator's property. On the 22nd October, 1894, *K* filed a petition of review, stating that at the date of the decree he was a minor and had only recently, *viz.*, on the 14th December, 1894, attained the age of eighteen years. He contended that there was error apparent on the face of the decree, inasmuch as it did not provide that he should have an opportunity of showing cause against it in so far as it affected his interest after he attained his majority:—*Held*, that the review could not be granted. The Courts in India after deciding an issue in which an infant, party to suit, is interested, have no power to reserve to the infant the right of questioning such decision. At all events a decree is not erroneous for not containing such a provision when the issue in which the infant is interested has been fully gone into and argued before the Court. A decree passed against an infant properly represented is binding upon him like a decree passed against an adult, but it is open to the infant to impeach such decree by a suit in cases where his guardian has been guilty of fraud or negligence in allowing the decree to be passed against him. CURSANDAS NATHA *v.* LADKAVAHU.

[19 Bom. 571

7.—*Dekhan Agriculturists Relief Act* (*XVII of* 1879), *s.* 53—*Discretion of Court—Power of Special Judge to review ex-parte order.*] The Special Judge under the Dekhan Agriculturists Relief Act (XVII of 1879) has power to review an *ex parte* order made by him. RAMCHANDRA NARAYAN KULKARNI *v* DRAUPADI.

[20 Bom. 281

8.—*Dekhan Agriculturists Relief Act* (*XVII of* 1879), *ss.* 53, 73 *and* 74—*Review of first Court's order—Civil Procedure Code* (1882), *Application of—District Judge, Jurisdiction of—Assistant Judge, Jurisdiction of—Discretion of Court.*] An Assistant Judge having found that the defendants in a suit pending before him were not agriculturists, the defendants presented a petition for review of that finding, and in review the Assistant Judge came to a contrary conclusion:—*Held*, that as s. 74 of the Dekhan Agriculturists Relief Act (XVII of 1879) only makes the Civil Procedure Code (Act XIV of 1882) applicable to suits before the Subordinate Judge, the conduct of proceedings before a District or Assistant Judge when sitting in revision under s. 53 of Act XVII of 1879 is within his own discretion, and the granting of a review on the ground of mistake as to the nature of a defendant's income is a reasonable exercise of such discretion. BADARICHARYA *v.* RAMCHANDRA GOPAL SAVANT.

[19 Bom. 113

9.—*Dekhan Agriculturists Relief Act* (*XVII of* 1879), *ss.* 53, 73 *and* 74—*Power of Special Judge to review his own decree—Application of Civil Procedure Code* (1882) *to proceedings of Special Judge—Discretion of Court—Superintendence of High Court—Civil Procedure Code, s.* 622.] The Special Judge appointed under the Dekhan Agriculturists Relief Act (XVII of 1879) (the defendant not appearing) reversed, in revision under s. 53 of that Act, the decree of a Subordinate Judge and passed a decree for the plaintiff. One of the defendants, who, it appeared, had not been served with notice of the previous application for review, subsequently applied to the Special Judge to review his decree, and that application was granted on the ground that the applicant had not had notice of the former review. On this subsequent review the Special Judge discovered that he had made a mistake with reference to the date of certain documents, and that this mistake

REVIEW—CIVIL CASES—*concluded.*

(2) POWER TO REVIEW—*concluded.*

had led him to a wrong conclusion upon the merits of the case. He consequently reversed his former order and dismissed the suit, confirming the original decree of the Subordinate Judge. The plaintiff then applied to the High Court under its extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882):—*Held*, that in granting a re-hearing the Special Judge had exercised a reasonable discretion with which the High Court could not interfere in its extraordinary jurisdiction. The Civil Procedure Code is not applicable to proceedings before the Special Judge, and the conduct of such proceedings rests within his discretion. *Badaricharya* v. *Ramchandra Gopal Savant*, I. L. R. 19 Bom. 113, approved. PARSONS, J.—The Special Judge cannot, under the Dekhan Agriculturists Relief Act, review his decree and order a new trial on the ground of discovery of fresh evidence, but he has discretional power to review his decree in order to correct a mistake into which he has fallen. RAMSING *v.* KISANSINGH.

[19 Bom. 116

(3) GROUND FOR REVIEW.

10.—*Civil Procedure Code* (1882), *s.* 623—*Review of judgment on second appeal—Alleged discovery of new and important documentary evidence—Ground which could not be relied on on second appeal.*] In a suit on a mortgage it was held by the lower Appellate Court and by the High Court on second appeal that the properties comprised therein were under attachment at the time of its execution, and that it was accordingly void under the Civil Procedure Code, s. 276, as against the claims of judgment-creditors enforceable under the attachment. The plaintiff, who was the appellant on second appeal, sought a review of the judgment pronounced therein on the ground of the discovery of new and important documentary evidence from which it would appear that the properties in question were not under attachment at the date of the mortgage:—*Held*, that the application for review could not be entertained for the reason that the ground relied upon could not be successfully relied upon on a second appeal. RARU KUTTI *v.* MAMAD.

[18 Mad. 480

11.—*N. W.-P. Rent Act* (*XII of* 1881), *s.* 185—*Civil Procedure Code* (1882), *s.* 623.] Section 623 and the following sections of the Code of Civil Procedure which deal with reviews of judgments have no application to suits and proceedings under the N.-W. P. Rent Act, 1881. Where s. 185 of Act XII of 1881 applies, it is only in cases where there is no right of appeal that a review can be granted, and that only on the special ground provided for in the Act itself. WAZIR SINGH *v.* KISHORI RAWANJI.

[19 All. 522

REVIEW—CRIMINAL CASES.

—Order rejecting appeal as barred by limitation—Review of such order—Finality of judgments in criminal matters—Criminal Procedure Code (1882), *ss.* 421 *and* 430.] A Sessions Judge dismissed an appeal on the ground that it was barred by limitation. On a subsequent application by the accused, the Judge admitted the appeal and at the hearing acquitted him. The High Court sent for the record in the exercise of its revisional jurisdiction:—*Held*, that the order of acquittal was *ultra vires* under s. 430 of the Code of Criminal Procedure. The order dismissing the appeal was final and not open to review. It was argued that s. 421 of the Criminal Procedure Code only applies to orders passed on the merits, and that, as the order rejecting the appeal was not of that class, it was not an order "upon appeal" and was not final under s. 430:—*Held*, that s. 421 was not limited to orders passed on the merits, and that the order in question was an order upon appeal and final under s. 430. The Criminal Procedure Code makes no provision for review of judgments in criminal matters by Subordinate Appellate Courts. The jurisdiction of revision is vested in the High Court, which has ample powers under Chap. XXXII to rectify any inadvertent failure of justice. QUEEN-EMPRESS *v.* BHIMAPPA BIN RAMANNA.

[19 Bom. 732

REVISION—CIVIL CASES.

Col.

1. Small Cause Court Cases ... 1110

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

——, Power of.

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 53.

[19 Bom. 286

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 680

(1) SMALL CAUSE COURT CASES.

1.—*Provincial Small Cause Courts Act* (*IX of* 1887), *s.* 25—*Discretion of Court—Superintendence of High Court under Civil Procedure Code, s.* 622.] Section 25 of Act IX of 1887 was not intended to give what would practically be an appeal in every case from the decision of a Court of Small Causes, but the discretion to be exercised thereunder should be guided by the same considerations as those which govern the application of s. 622 of Act XIV of 1882. *Muhammad Bakar* v. *Bahal Singh*, I. L. R. 13 All. 277; and *Raghunath Bahai* v. *Official Liquidator of the Himalaya Bank*, I. L. R. 15 All. 139, referred to. SARMAN LAL *v.* KHUBAN.

[16 All. 476

2.—*Provincial Small Cause Courts Act* (*IX of* 1887), *s.* 25—*Civil Procedure Code, s.* 622—*Superintendence of High Court—Ground for revision—Question of limitation.*] It is no ground for revision under s. 25 of Act IX of 1887 that the Court

REVISION—CIVIL CASES—*concluded.*

(1) SMALL CAUSE COURT CASES—*concluded.*

whose order it is sought to revise may have come to an erroneous decision on a point of limitation. *Amir Hassan Khan* v. *Sheo Baksh Singh*, I. L. R. 11 Calc. 6, referred to. SARMAN LAL *v.* KHUBAN.

[17 All. 422

3.—*Provincial Small Cause Courts Act (IX of 1887), s. 25—Jurisdiction and superintendence of the High Court—Civil Procedure Code* (1882), *s.* 622—*Practice.*] An error of law or procedure in the Small Cause Court confers jurisdiction upon the High Court to exercise the power committed by s. 25 of the Provincial Small Cause Courts Act (IX of 1887). The powers conferred by the section are, however, purely discretionary, and the section does not give a right of appeal in all Small Cause Court cases either on law or on fact. The High Court is to determine in what cases it shall exercise the powers conferred upon it. It is not the practice of the Bombay High Court to interfere under s. 25 of the Act when there are no substantial merits in the case of the applicant. It interferes to remedy injustice. It is slow to interfere where substantial justice has been done by the Subordinate Court, although that Court may technically have erred. The provisions of s. 622 of the Code of Civil Procedure (Act XIV of 1882) do not afford a safe guide for the exercise of the extraordinary jurisdiction under s. 25 of the Provincial Small Cause Courts Act. The wording of the two sections is wholly different, that of s. 25 of the Provincial Small Cause Courts Act being of the widest description and conferring the most ample discretion on the High Court, while it has been held by the Privy Council that s. 622 of the Civil Procedure Code ought to be construed in a very restricted and limited sense. POONA CITY MUNICIPALITY *v.* RAMJI RAGHUNATH.

[21 Bom. 250

REVISION—CRIMINAL CASES.

	Col.
1. Generally	... 1112
2. Questions of Fact	... 1112
3. Miscellaneous Cases	... 1113

See ABSCONDING OFFENDER.

[19 Mad. 3
[20 Mad. 88

See ACCUSED PERSON, RIGHT OF.

[19 Mad. 14

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

[22 Calc. 387

See PRACTICE—CRIMINAL CASES—REVISION.

[21 Calc. 827

See VILLAGE CHOWKIDARS ACT, S. 8.

[23 Calc. 421

REVISION—CRIMINAL CASES—*contd.*

(1) GENERALLY.

1.—*Exercise of revisional power during hearing of case—Illegal prosecution by Municipal Commissioners under the Penal Code.*] Where, during the hearing of proceedings in a prosecution by certain Municipal Commissioners under the Penal Code of a man who had made a false statement in an application for a license, the High Court stayed the proceedings, and issued a rule to show cause why they should not be quashed, it was contended at the hearing of the rule, that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction:—*Held*, that the High Court has power to interfere at any stage of a case, and that when it is brought to its notice that a person has been subjected, as in this case, for over two months to the harassment of an illegal prosecution, it is its bounden duty to interfere. CHANDI PERSHAD *v.* ABDUR RAHMAN.

[22 Calc. 131

2.—*Criminal Procedure Code* (1882) *s.* 439—*Power of High Court on revision—Setting aside conviction.*] In exercising its powers under s. 439 of the Code of Criminal Procedure, it is open to the High Court to alter any finding and confirm a conviction, and if the evidence on the record in a case be sufficient to warrant a conviction, the Court would not be justified in setting such conviction aside, merely because the view taken of the evidence by the lower Court is not sustainable, or some fact which ought to have been found by that Court is not found or found incorrectly. BALMAKAND RAM *v.* GHANSAMRAM.

[22 Calc. 391

3.—*Power to interfere with interlocutory orders of Subordinate Courts.*] The High Court can interfere with an interlocutory order passed by a Magistrate. *Abdool Kadir Khan* v. *Magistrate of Purneah*, 11 B. L. R. Ap. 8; 20 W. R. Cr. 23; and *Chandi Pershad* v. *Abdur Rahman*, I. L. R. 22 Calc. 131, followed. QUEEN-EMPRESS *v.* NAGESHAPPA PAI.

[20 Bom. 543

4.—*Conviction under Cattle Trespass Act (I of 1871)—Appeal—Criminal Procedure Code, ss. 435 and 438.*] There being no appeal from a conviction under the Cattle Trespass Act, the High Court refused to revise the proceedings of the lower Court under ss. 435 and 438, Criminal Procedure Code, since, there being evidence to support the conviction, to adopt such a course would be to substantially allow an appeal. QUEEN-EMPRESS *v.* LAKSHMI NAYAKAN.

[19 Mad. 238

(2) QUESTIONS OF FACT.

5.—*Power of High Court in revisional cases—Power to go into case on facts—Criminal Procedure Code* (1882), *s.* 439.] Under s. 439 of the Code of Criminal Procedure, 1882, the High Court has power to consider the facts of a case in revision. RAM BRAHMA SIRCAR *v.* CHANDRA KANTA SHAH.

[21 Calc. 93

REVISION—CRIMINAL CASES—*contd.*

(2) QUESTIONS OF FACT—*concluded.*

6.—*Criminal Procedure Code* (1882), *s.* 439—*Power of High Court to go into facts on revision.*] The interference of the High Court in revision is not limited to matters of law; it is fully competent to the High Court to enter into matters of fact if it thinks fit. But the mere application of a party to examine the evidence in any case would not be a sufficient ground for doing so. There must appear, on the face of the judgment or order complained of, or of the record, some ground to induce the High Court to think that the evidence ought to be examined in order to see that there has no failure of justice. But no hard-and-fast rule can be laid down; each case will have to be dealt with according to its own circumstances. KESHAB CHUNDER ROY *v.* AKHIL METEY.

[22 Calc. 998

7.—*Case depending on consideration and appreciation of evidence—Abatement of appeal.*] Two persons, *M* and *N*, were convicted of criminal breach of trust, and each was sentenced to one year's rigorous imprisonment and a fine of Rs. 1,000. Both prisoners filed an appeal to the High Court. *N* died pending his appeal. On *M's* appeal, the High Court passed an order acquitting him and reversing his conviction and sentence. Thereupon one of the relatives of the deceased *N* applied to the High Court to set aside the conviction and sentence passed in his case, and order the fine to be refunded:—*Held*, that on *N's* death his appeal abated under s. 431 of the Code of Criminal Procedure (Act X of 1882), and as the case turned on the appreciation of evidence, the High Court declined to interfere in the exercise of its revisional jurisdiction, referring the legal representatives of the deceased to the Governor in Council for redress. IN RE NABISHAH.

[19 Bom. 714

(3) MISCELLANEOUS CASES.

8.—*Criminal Procedure Code* (1882), *ss.* 439 *and* 476—*Order directing prosecution.*] Under the general revisional powers conferred by s. 439 of the Code of Criminal Procedure, a High Court has power to consider the propriety of an order which purports to be passed under s. 476 of the Code. *Queen-Empress* v. *Rachappa*, I. L. R. 13 Bom. 109, dissented from. IN THE MATTER OF THE PETITION OF MATHURA DAS.

[16 All. 80

9.—*Criminal Procedure Code* (1882), *s.* 435—*Order under s.* 144 *of the Criminal Procedure Code—Disputed possession of temple—Magistrate, Jurisdiction of.*] The District Temple Committee dismissed the trustees of a certain temple and appointed others. The dismissed trustees retained possession. A breach of the peace having become imminent in the opinion of a Deputy Magistrate, he made an order under the Criminal Procedure Code, s. 144, directing the newly-appointed trustees not to interfere with the temple or its management:—*Held*, that the Magistrate had jurisdiction to make the order, and

REVISION—CRIMINAL CASES—*concld.*

(3) MISCELLANEOUS CASES—*concluded.*

therefore the High Court had no power to interfere in revision under the Criminal Procedure Code, s. 435. PALANIAPPA CHETTI *v.* DORASAMI AYYAR.

[18 Mad. 402

REVIVOR.

See LIMITATION ACT, ART. 180.

[22 Calc. 921
[24 Calc. 244

See PRIVY COUNCIL, PRACTICE OF — REVIVOR OF APPEAL.

[21 Calc. 997
[L. R. 21 I. A. 163

RIGHT OF APPEAL.

See BOMBAY REVENUE JURISDICTION ACT, S. 11.

[20 Bom. 803

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[16 All. 390

See PAUPER SUIT—APPEALS.

[18 Bom. 454

See PRACTICE—CIVIL CASES—APPEAL.

[18 Bom. 520

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[18 Bom. 454

RIGHT OF OCCUPANCY.

		Col.
1.	Acquisition of Right	... 1114
2.	Loss or Forfeiture of Right	... 1115
3.	Transfer of Right	... 1115

——, Mortgage of.

See KHOTI SETTLEMENT ACT.

[20 Bom. 78

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[16 All. 390

——, Ryot having.

See LANDLORD AND TENANT—ACCRETION TO TENURE.

[21 Calc. 233

(1) ACQUISITION OF RIGHT.

1.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 5, *cls.* 25 *and* 178—*Definition of ryoti holding—Lessees who are not ryoti within the Act—Zur-i-peshgi lease—Stipulation contrary to right to acquire occupancy rights—Act X of* 1859, *s.* 7.] A tenant, holding under a lease assigned to him in 1890 by the original lessee, who since 1867 had continuously occupied the land under successive leases, claimed, in virtue of the occupancy for more than

RIGHT OF OCCUPANCY—*continued.*

(1) ACQUISITION OF RIGHT—*concld.*

twelve years, to be a ryot within the Bengal Tenancy Act, 1885, either with occupancy, or with non-occupancy, rights:—*Held*, that this tenant's holding was excluded from the operation of that Act by the effect of s. 5, sub-section 5, on account of the extent of the area of the land leased, which was more than one hundred standard *bighas*. A *zur-i-peshgi* lease is not a mere contract for the cultivation of the land at a rent, but is a security to the tenant for his money advanced. Two of the leases were *zur-i-peshgi*, or made on money advanced by the lessee to the lessor. The tenant's possession in this case was, in part at least, that of a creditor operating payment to himself, and was no foundation for a claim for occupancy rights. As to the effect of written stipulations contrary to the latter, s. 7 of the Bengal Rent Law, Act X of 1859, is superseded, if not wholly repealed, by s. 178 of the Bengal Tenancy Act, 1885. BENGAL INDIGO CO. *v.* ROGHOBUR DAS.

[24 Calc. 272
[L. R. 23 I. A. 158

(2) LOSS OR FORFEITURE OF RIGHT.

2.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 19—*Statutory right, Effect on, of repeal of Act which gives it.*] Where a right of occupancy had been acquired under the old Tenancy Act (VIII of 1869) which is repealed by the Bengal Tenancy Act (VIII of 1885):—*Held* that, apart from the provisions of s. 19 of the latter Act, such right of occupancy was not forfeited by the repeal, there being nothing in the new enactment to deprive any person of a statutory right which had been actually acquired. HURRY RAM *v.* NURSINGH LAL.

[21 Calc. 129

3.—*Bombay Land Revenue Act* (*Bombay Act V of* 1879), *ss.* 81 *and* 153—*Default in paying assessment of revenue—Payment of assessment by another—Effect of order of Collector transferring lands into name of person paying assessment.*] An order made by a Collector removing *A's* lands from his *khata* and transferring them to *B's khata*, on the ground that *A* had allowed the assessment thereof to fall into arrears, and that *B* had paid the assessment, does not by itself amount to forfeiture of *A's* interest in the lands. BHAU *v.* HARI.

[20 Bom. 747

(3) TRANSFER OF RIGHT.

4.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 22, *cl.* 2—*Transfer of occupancy right and purchase by some of several co-sharer landlords—Merger—Right of other co-sharer landlords to rent.*] The acquisition of an occupancy right by a proprietor does not, under sub-section 2 of s. 22 of the Bengal Tenancy Act, affect the right of a co-sharer landlord to receive his share of the rent of the tenancy. The "third person" mentioned in that sub-section includes every person interested other than the transferor and transferee. SITANATH PANDA *v.* PELARAM TRIPATI.

[21 Calc. 869

RIGHT OF OCCUPANCY—*continued.*

(3) TRANSFER OF RIGHT—*continued.*

5.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 183, *Ill.* (1)—*Custom or usage, Nature of evidence to prove.*] In suits by a landlord for ejectment of purchasers from ryots having only a right of occupancy, on the ground that the holdings of such ryots were not transferable without the landlord's consent, the defendants pleaded custom or usage in support of the transfers. Questions arose as to the character of the usage required to be proved in such cases and the nature of the evidence required to prove the usage. In second appeal the High Court (1) upon a review of the previous law on the subject, *held*, that, however the law may have been previously declared, as it is now expressed in the Bengal Tenancy Act, s. 183, Ill. 1, a transfer in accordance with usage is valid even without the consent of the landlord. (2) After applying the principles laid down by the Privy Council as regards evidence of mercantile usage in the case of *Juggomohun Ghose* v. *Manick Chand*, 7 Moo. I. A. 263:—*Held*, that it would be necessary in these cases either to prove the existence of the usage on the landlord's estate, or that it is so prevalent in the neighbourhood that it can reasonably be presumed to exist on that estate. The finding of the lower Appellate Court on the existence of the usage being founded on irrelevant matters the case was remanded for retrial. PALAKDHARI RAI *v.* MANNERS.

[23 Calc. 179

6.—*Bengal Tenancy Act* (*VIII of* 1885), *ss.* 183 *and* 178, *sub-section* (3), *cl.* (*d*)—*Custom or usage—Local usage—Evidence to prove usage—Evidence Act* (*I of* 1872), *ss.* 42 *and* 48—*Judgment as to transferability of tenures in adjoining villages.*] In a suit by the landlords to avoid the sale of an occupancy holding in their *mouzah* and eject the purchaser thereof, one of the questions was as to the existence of a custom or usage under which the ryot was entitled to sell such a holding:—*Held*, with reference to the expressions "custom or usage" in s. 183 and "local usage" in cl. (*d*), sub-section (3), of s. 178 of the Bengal Tenancy Act (VIII of 1885)—(1) The word "usage" would include what the people are now or recently in the habit of doing in a particular place. (2) In deciding on the evidence of such a custom or usage, regard should be had to s. 48 of the Indian Evidence Act (I of 1872). (3) A judgment of the High Court as to the transferability of similar tenures in an adjoining village of the same *pergunnah* is admissible as evidence of such usage under s. 42 of the Evidence Act. DALGLISH *v.* GUZUFFER HASSAIN.

[23 Calc. 427

7.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 22—*Co-owner's purchase of occupancy right, Effect of.*] There is no law which prevents one of several co-proprietors from holding the status of a tenant under the other co-proprietors of land which appertains to the common estate. The effect of the purchase, by one co-owner of land, of the occupancy right, is, not that the holding ceases

RIGHT OF OCCUPANCY—*concluded.*

(3) TRANSFER OF RIGHT—*concluded.*

to exist, but only the occupancy right which is an incident of the holding. *Sitanath Panda* v. *Pelaram Tripati*, I. L. R. 21 Calc. 869, referred to. JAWADUL HUQ *v.* RAMDAS SAHA.

[24 Calc. 143

8.—*Transferability of right—Custom—Bengal Tenancy Act* (*VIII of* 1885), *ss.* 65 *and* 73.] In the absence of custom or local usage to the contrary, a ryoti holding in which the ryot has only a right of occupancy is not saleable at the instance of the occupancy ryot or any creditor of his other than his landlord seeking to obtain satisfaction of his decree for arrears of rent. BHIRAM ALI SHAIK SHIKDAR *v.* GOPIKANTH SHAHA.

[24 Calc. 355

9.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 22, *cl.* (1)—*Effect of purchase, by talukdar, of ryot's holding.*] If a *talukdar*, at a sale in execution of a decree obtained by him against a ryot, purchase the ryot's interest, such purchase does not extinguish the holding, but merely divests it of the right of occupancy (if any) attached to it. *Jawadul Huq* v. *Ram Das Saha*, I. L. R. 24 Calc. 143, followed. MIAJAN *v.* MINNAT ALI.

[24 Calc. 521

10.—*N.-W. P. Rent Act* (*XII of* 1881) *s.* 9—*Succession to occupancy-tenant—Onus of proof—Collateral—Sharer in cultivation.*] Where a collateral relative claims to be entitled to succeed to an occupancy holding on the death of the occupancy tenant without direct heirs, it is incumbent on him to prove, both that he is the heir according to the law to which he is subject, and also that he shared in the cultivation of the occupancy holding during the lifetime of the deceased occupancy tenant. But *non sequitur* that if there is a more remote collateral who was a sharer in the cultivation of the occupancy holding, he is entitled to succeed in preference to a nearer collateral who did not so share in the cultivation. *Badri Das* v. *Debi Das*, Weekly Notes All. (1888), p. 200, referred to. SHANKAR LAL *v.* DALIP SINGH.

[17 All. 33

11.—*Suit for registration of name in landlord's serishta—Right of suit—Notice—Bengal Tenancy Act* (*VIII of* 1885), *s.* 73.] Under the Bengal Tenancy Act (VIII of 1885) the transferee of a holding of a ryot with right of occupancy transferable by custom cannot maintain a suit for registration of his own name in the landlord's *serishta* by expunging that of his vendor. A declaration that the transferee, and not the old tenant, is responsible for the rent of the holding cannot be obtained without service of notice as prescribed by s. 73 of the Act. AMBIKA PERSHAD *v.* CHOWDHRY KESHRI SAHAI.

[24 Calc. 642

RIGHT OF REPLY.

1.—*Several persons tried jointly—Right of reply where one of several accused calls witnesses and the others do not—Criminal Procedure Code* (1882), *and ss.* 289, 290 *and* 292.] Where one of several accused persons tried jointly calls witnesses at the trial, but the other accused call no witnesses, they must, under s. 290 of the Criminal Procedure Code, all follow one another in their defence, and the prosecution has, under s. 292, the right of reply on the whole case. QUEEN-EMPRESS *v.* SADANAND NARAYAN.

[18 Bom. 364

2.—*Tender of document to witness for crown in cross-examination — Criminal Procedure Code* (1882), *s.* 292.] The action of the defence, during the cross-examination of a witness for the Crown, in tendering a document to such witness and using the same as evidence for the defence, was held to entitle the Crown to reply under s. 292 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* MOSS.

[16 All. 88

RIGHT OF SUIT.

		Col.
1.	Interest to Support Right	...1122
2.	Survival of Right	...1122
3.	Awards	...1123
4.	Caste Questions	...1123
5.	Charities and Trusts	...1123
6.	Claim to Attached Property	...1125
7.	Contracts and Agreements	...1125
8.	Co-sharers	...1126
9.	Documents, Loss or Destruction of	...1126
10.	Endowments, Suits relating to	...1127
11.	Fraud	...1127
12.	Injury to Enjoyment of Property	...1128
13.	Intestacy	...1129
14.	Money Lent	...1130
15.	Obstruction to Public Highway	...1130
16.	Office or Emolument	.. 1131
17.	Privacy, Invasion of	...1131
18.	Property at Disposal of Government	...1131
19.	Sale in Execution of Decree	...1132

See ABSCONDING OFFENDER.

[20 Mad. 88

See ACT XX OF 1863, S. 11.

[19 Mad. 395

See ARBITRATION — PRIVATE ARBITRATION.

[20 Mad. 89

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.

[17 Mad. 282
[23 Calc. 699
[18 Mad. 436
[20 Mad. 349

See BENAMI TRANSACTION — GENERAL CASES.

[18 Mad. 469
[23 Calc. 460, 962, 962 note

RIGHT OF SUIT—*continued.*

See BENGAL TENANCY ACT, S. 16.

[24 Calc. 241

See BENGAL TENANCY ACT, SS. 69 AND 70.

[22 Calc. 480

See CERTIFICATE OF ADMINISTRATION—CERTIFICATES UNDER BOMBAY REGULATION VIII OF 1819.

[19 Bom. 320

See CASES UNDER CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[22 Calc. 483, 501
[18 Mad. 26
[19 Bom. 532
[19 All. 480

See COMPANY—FORMATION AND REGISTRATION.

[19 Mad. 31, 200

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

[18 All. 106
[19 All. 462

See DEBTOR AND CREDITOR.

[19 Bom. 12
[20 Mad. 91

See DEFAMATION.

[17 Mad. 87
[18 Mad. 250

See EJECTMENT.

[19 All. 541

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[23 Calc. 851

See EXECUTION OF DECREE—MODE OF EXECUTION—MAINTENANCE.

[16 All. 179

See FOREIGN COURT, JUDGMENT OF.

[22 Calc. 222
[L. R. 21 I. A. 171

See FRAUD—ALLEGING OR PLEADING FRAUD.

[20 Mad. 326, 333

See FRAUD—EFFECT OF FRAUD.

[24 Calc. 533

See HEREDITARY OFFICES ACT, S. 17.

[19 Bom. 581

RIGHT OF SUIT—*continued.*

See HINDU LAW—CUSTOM—ADOPTION.

[19 Mad. 127

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[20 Mad. 323

See HINDU LAW—PARTITION—REQUISITES FOR PARTITION.

[20 Mad. 253
[L. R. 24 I. A. 118

See HINDU LAW—PARTITION—RIGHT TO PARTITION—MINOR.

[19 Bom. 99

See HINDU LAW—PARTITION—RIGHT TO PARTITION—SON.

[18 Mad. 179

See HINDU LAW—REVERSIONERS—ARRANGEMENT BETWEEN WIDOW AND REVERSIONERS.

[22 Calc. 354

See HINDU LAW—REVERSIONERS—POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

[19 Bom. 614

See HUNDI.

[20 Bom. 133

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[24 Calc. 260

See CASES UNDER JURISDICTION OF CIVIL COURT.

See KARNAM.

[20 Mad. 145

See KHOTI SETTLEMENT ACT, S. 17.

[21 Bom. 608

See LAND REGISTRATION ACT.

[22 Calc. 454
[23 Calc. 87
[24 Calc. 404

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[21 Calc. 433
[17 Mad. 296

See LIMITATION ACT, S. 15.

[17 All. 198
[L. R. 22 I. A. 31

See LIMITATION ACT, ART. 11.

[20 Bom. 801

See LIMITATION ACT, ART. 14.

[24 Calc. 149

See LUNATIC.

[19 Bom. 135

RIGHT OF SUIT—*continued.*

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 262.

[19 Mad. 10

See MAHOMEDAN LAW—DEBTS.

[19 Bom. 273

See MAMLATDARS COURTS ACT, S. 4.

[18 Bom. 46

See MAMLATDARS COURTS ACT, S. 18.

[19 Bom. 828

See MESNE PROFITS—RIGHT TO, AND LIABILITY FOR, MESNE PROFITS.

[19 Bom. 532

See MINOR—LIABILITY ON CONTRACTS.

[24 Calc. 265

See MORTGAGE — REDEMPTION—RIGHT OF REDEMPTION.

[19 All. 202

See PARTIES—PARTIES TO SUITS—BENAMIDARS.

[18 All. 69

[24 Calc. 644

See POSSESSION—EVIDENCE OF TITLE.

[21 Calc. 244

See PRE-EMPTION—PROFITS OF LAND.

[19 All. 261

See PUBLIC DEMANDS RECOVERY ACT, S. 2.

[23 Calc. 641

See REGISTRATION ACT, S. 77.

[16 All. 303

[21 Bom. 699

See RES JUDICATA—CAUSE OF ACTION.

[23 Calc. 302

[19 All. 202

See RESTITUTION OF RIGHTS BY MOTION.

[19 All. 136

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

[24 Calc. 642

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[21 Calc. 255

See SALE IN EXECUTION OF DECREE—RESALE.

[19 All. 22

See SPECIFIC RELIEF ACT, S. 9.

[22 Calc. 562

See SPECIFIC RELIEF ACT, S. 21.

[23 Calc. 956

RIGHT OF SUIT—*continued.*

See TRANSFER OF PROPERTY ACT, S. 67.

[17 Mad. 131

(1) INTEREST TO SUPPORT RIGHT.

1.—*Probate and Administration Act* (*V of* 1881), *s.* 90, *sub-section* 4, *as amended by Act VI of* 1889—*Executor and residuary legatee, Power of*—"*Person interested in the property*," *Meaning of.*] *D*, residuary legatee under a will, having obtained an order for grant of probate in his favour, sold certain properties covered by the will to *J*. In execution of a decree passed against *D* in his personal capacity, the properties were attached, and *J* preferred a claim on the ground of his purchase. The claim was allowed, and the properties were released from attachment. In a suit brought by the decree-holder for a declaration that the properties were liable to be sold in execution of his decree, it was *held*, that the words "person interested in the property" in sub-section (4) of s. 90 of the Probate and Administration Act (V of 1881), as amended by s. 14 of Act VI of 1889, must mean a person interested independently of the executor whose alienation is sought to be avoided. The plaintiff deriving his interest as creditor of *D* in his personal capacity, and not as creditor of the estate of the testator, was not entitled to avoid the alienation under that section even had it been invalid. JAGOBANDHU DEY PODDAR *v.* DWARIKA NATH ADDYA.

[23 Calc. 446

(2) SURVIVAL OF RIGHT.

2.—*Civil Procedure Code* (1882), *ss.* 361 *and* 371—*Cause of action—Application to revive suit by person whose claim is in conflict with that of original plaintiff—Abatement of suit—Substitution of parties.*] The language of ss. 361 and 371 of the Code of Civil Procedure relating to abatement of a suit show that, where it is sought to revive a suit on the death of the plaintiff, the cause of action of the original and revived suit must be the same, and that no fresh cause of action can be imported into the revived suit. Where a suit was brought to have it declared that the plaintiff was entitled to succeed as *mohant* of the Tarkessur shrine on the allegations (*a*) that he had been selected as the *chela* or disciple of the deceased *mohant*; (*b*) that the ceremony of initiation had been duly performed, by which he was brought into the brotherhood of his *gurus*; and (*c*) that the installation ceremony had been performed with the consent of the *dasnami*, and that by virtue thereof he became the *mohant*, and exercised the functions of that office; and on the death of the plaintiff an application to be substituted in his place was made on grounds which put the applicant into opposition to the original plaintiff and made his claim not dependant on the original plaintiff's case but in conflict with it:—*Held* that the right of suit could not be said to survive to the applicant within the meaning of the sections of the Code relating to abatement of suit, but that the suit abated by the death of the plaintiff. SHAM CHAND GIRI *v.* BHAYARAM PANDAY.

[22 Calc. 92

RIGHT OF SUIT—*continued.*

(3) AWARDS.

3.—*Suit to enforce award—Civil Procedure Code* (1882), *s.* 525.] Disputes between the members of a Hindu family were referred to arbitrators who made an award as to how the whole of the property should be divided. In pursuance of the award, part of the moveable property was divided. Subsequently one of the members of the family died. The plaintiff, another member of the family, now sued to enforce the award, or in the alternative for partition:—*Held*, that the provisions of the Civil Procedure Code, s. 525, did not preclude the plaintiff from suing to enforce the award. *Gopi Reddi* v. *Mahanandi Reddi*, I. L. R. 15 Mad. 99, followed. SUBBARAYA CHETTI *v.* SADASIVA CHETTI.

[20 Mad. 490

(4) CASTE QUESTIONS.

4.—*Custom of caste—Funeral ceremonies—Right to assistance of fellow-members of caste—Refusal to assist—Cause of action.*] The plaintiff, a Hindu and Kharva by caste, alleged in his plaint that, pursuant to a usage of his caste, he, on the occasion of his child's death, called upon the defendants, who were his caste-fellows, to assist him in removing the dead body and performing caste ceremonies incidental thereto; that the defendants refused to do so, and induced other members of the caste to refuse also; that, in consequence thereof, the plaintiff was injured in his caste-status; and he prayed for a declaration that the defendants' acts were unlawful, and that he was lawfully entitled to exercise and enjoy all his customary caste-rights and privileges, and also for damages and for an injunction restraining the defendants from preventing other members of the caste from recognising him and treating him as a member of the caste:—*Held*, that the plaint disclosed no cause of action, and must be rejected. KANJI BAVLA *v.* ARJUN SHAMJI.

[18 Bom. 115

(5) CHARITIES AND TRUSTS.

5.—*Civil Procedure Code* (1882), *s.* 539—*Suit to remove a trustee of a charitable trust—Statute 52, Geo. III, cap.* 101.] A suit to remove a trustee of a charitable trust does not lie under s. 539 of the Code of Civil Procedure. *Narasimha* v. *Ayyan Chetti*, I. L. R. 12 Mad. 157, followed. *Per* SHEPHARD, J.—The language of s. 535 is in part borrowed from 52 Geo. III, cap. 101 (Sir Samuel Romilly's Act), and the decisions upon that statute are in a measure reproduced in the section. Section 539 should accordingly be construed in the light of the decisions on that statute, so far as they are applicable to the language of the section; and the statute having from the first been held to be inapplicable to cases in which the hostile removal of a trustee is required, s. 539 is likewise inapplicable to such cases. RANGASAMI NAICKAN *v.* VARADAPPA NAICKAN.

[17 Mad. 462

6.—*Suit by trustees to eject a trespasser from trust property—Civil Procedure Code* (1882), *s.* 539.] *D* was the manager of a religious endowment called the *Chinchvad Sansthan*. On his death in 1852, disputes arose between *C* and *G* regarding the management of the *sansthan*, each claiming to be the heir and successor of *D*. After a long litigation they entered into a compromise in 1881, by which a portion of the *sansthan* property, consisting of certain *inam* villages, lands, and *varshasans*, were assigned to *G*, and *C* was left in charge of the rest of the *sansthan* property, together with all the rights, privileges, and *manpans* enjoyed by the hereditary trustee of the endowment. In 1886 by a decree made in a suit called the "Charity Suit," *C* was removed from his office, and the plaintiffs were appointed trustees in his place. In 1889, the plaintiffs filed the present suit to set aside the compromise of 1881, and recover back the *sansthan* property assigned to *G* under that compromise:—*Held*, that the suit did not fall under s. 539 of the Code of Civil Procedure (Act XIV of 1882). DHUNDIRAJ GANESH DEV *v.* GANESH.

[18 Bom. 721

7.—*Civil Procedure Code* (1882), *s.* 539—*Suit for removal of trustees of a public charity and for account—Jurisdiction of District Judge—Jurisdiction of Subordinate Judge.*] A suit to remove the trustees of a public charity, and to compel them to account and to make good the losses sustained by the charity in consequence of their default, is a suit which falls within the scope of s. 539 of the Code of Civil Procedure (Act XIV of 1882), and must therefore be instituted in a District Court, and not in a Subordinate Judge's Court. HUSSEINMIAN *v.* COLLECTOR OF KAIRA.

[21 Bom. 48

8.—*Civil Procedure Code* (1882), *s.* 539—*Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Limitation Act (XV of* 1877), *Sch. II, Art.* 134—*Statute* 52, *Geo. III, cap.* 101—*Civil Procedure Code Amendment Act (VII of* 1888)—*Act XX of* 1863, *s.* 14—*Duty of Collector in sanctioning suit—Irregularity not affecting merits of suit—Civil Procedure Code, s.* 578.] A suit for the dismissal of a trustee and for the recovery of trust property from the hands of a third party to whom the same has been improperly alienated is within the scope of s. 539 of the Civil Procedure Code. *Subbayya* v. *Krishna*, I. L. R. 14 Mad. 186, followed; *Lakshmandas Parashram* v. *Gaupatrav Krishna*, I. L. R. 8 Bom. 365, distinguished. Article 134 of the second schedule of the Indian Limitation Act (XV of 1877) applies to such a suit. The difference between the provisions of s. 539 of the Civil Procedure Code and those of 52 Geo. III, cap. 101 (Romilly's Act) pointed out. Persons having a right to worship in a temple are within the scope of s. 539. Under that section, as originally enacted, the words were "having a direct interest in the trust," and the word "direct" has been taken out by Act VII of 1888. The inference is that the Legis-

RIGHT OF SUIT—*continued.*

(5) CHARITIES AND TRUSTS—*concluded*.

lature intended to allow persons having the same sort of interest that is sufficient under s. 14 of the Act XX of 1863, to maintain a suit under s. 539. The Collector in giving his consent to the institution of a suit under s. 539 has to exercise his judgment in the matter, and see not only whether the persons suing are persons having an interest in the trust, but also whether the trust is a public trust of the kind contemplated by the section, and whether there are *primâ facie* grounds for thinking that there has been a breach of trust. But where the form of the permission showed that he had omitted to exercise his judgment in the matter of the interest of the plaintiffs in the trust, such omission was held to be a mere irregularity and within the scope of s. 578 of the Civil Procedure Code. SAJEDUR RAJA CHOWDHURI *v.* GOUR MOHUN DAS BAISHNAV.

[24 Calc. 418

9.—*Civil Procedure Code* (1882), *s.* 539—*Leave to sue—Power of Court to grant relief outside the sanction.*] When sanction is given to the institution of a suit under s. 539 of the Code of Civil Procedure (Act XIV of 1882) the suit must be limited to matters included in the sanction. It is not competent to the Court to enlarge the scope of the suit and grant reliefs other than those included in the terms of the sanction. HUSSEIN MIYAN *v.* COLLECTOR OF KAIRA.

[21 Bom. 257

(6) CLAIM TO ATTACHED PROPERTY.

10. —*Civil Procedure Code* (1882), *ss.* 278 *and* 283 *—Suit without bringing claim under s.* 278—*Suit to have property declared not liable in execution.*] The provisions of s. 278 of the Code of Civil Procedure and the sections immediately succeeding are not exclusive of the remedy provided by s. 283 of the Code. *Man Kuar* v. *Tara Singh*, I. L. R. 7 All. 583, considered. SUNDAR SINGH *v.* GHASI.

[18 All. 410

11.—*Civil Procedure Code* (1882), *s.* 283—*Effect on right of suit of temporary cessation of execution-proceedings—Order partly releasing attachment.*] Where a decree has not been adjusted or otherwise satisfied and is still operative, a temporary cessation of the execution-proceedings under it does not deprive the execution creditor of his rights to sue to set aside an order made under s. 283 of the Civil Procedure Code (Act XIV of 1882), releasing part of the property from attachment, and to have it declared that such part, or some fraction of such part, is liable to attachment. BALAJI SHAMJI NAIK *v.* MOROBA NAIK.

[21 Bom. 58

(7) CONTRACTS AND AGREEMENTS.

12.—*Promissory note or bond executed in Foreign State—Lex loci contractus—Suit upon consideration for the document — Lex fori—Procedure — Practice—Plaint, Form of—Issue.*] Where, according to the *lex loci contractus*, a promissory note or bond cannot, in the absence of registration, be

RIGHT OF SUIT—*continued.*

(7) CONTRACTS AND AGREEMENTS—*concld.*

a source of legal right, no action on an unregistered note or bond can be maintained. Whether a suit will lie upon the consideration for the instrument is a question of procedure, to be governed by the *lex fori*, and in British India such a claim must either be stated in the plaint as an independent ground of claim, or treated as such and an issue taken at the first hearing. *Valiappa* v. *Mahommed Khasim*, I. L. R. 5 Mad. 166, cited and followed. PALANIAPPA CHETTI *v.* PERIAKARUPPAN CHETTI.

[17 Mad. 262

13.—*Compromise of decree, Effect of—Mode of enforcing agreement of compromise—Reciprocal promises—Form of decree—Contract Act (IX of* 1872), *s.* 51.] A decree for partition having been compromised by an agreement made by the parties, and communicated to the Court which passed the decree:—*Held*, that the effect of the decree was extinguished by the agreement, which could only be enforced by a fresh suit, and not by an application for execution of the former decree. An agreement consisting of reciprocal promises to be performed by the plaintiffs, and the defendant can be sued upon by the plaintiffs when they have not refused to carry out their promises, though they may not have put an allegation in the plaint saying that they are ready and willing to do so, s. 50 of the Indian Contract Act being no bar to such a suit. When the plaintiffs are entitled to ask for the performance of the part of the contract in which they are interested, and the defendant claims execution of the whole, to which the plaintiffs do not object, the Court ought to pass a decree directing execution of the whole contract, instead of rejecting the claim. HARI RAGHUNATH JOSHI *v.* KRISHNAJI ANANT JOSHI.

[19 Bom. 546

(8) CO-SHARERS.

14. —*Property left undivided at partition—Suit to recover share of produce—Amendment of plaint—Suit for partition—Variance between pleading and proof.*] A claim to a share of the produce of the property left undivided at a partition does not lie, because such a claim is based on the right to a particular share in the property itself which has no existence in the case of an undivided family. A suit for a share of the produce of the property left undivided at partition cannot be amended, by making it a suit for partition, without entirely changing its character. GAVRISHANKAR PARABHURAM *v.* ATMARAM RAJARAM.

[18 Bom. 611

(9) DOCUMENTS, LOSS OR DESTRUCTION OF.

15.—*Loss of sale-deed—Suit to compel execution and registration of fresh deed.*] When a deed of sale of immoveable property for more than Rs. 100 is lost within the time allowed for the registration of the same, the purchaser may bring a suit against the vendor to compel the execution and registration of a fresh deed. NALLAPPA REDDI *v.* RAMALINGACHI REDDI.

[20 Mad. 250

RIGHT OF SUIT—*continued.*

(10) ENDOWMENTS, SUITS RELATING TO.

16.—*Suit by dharmakarta of temple to recover temple property—Religious Endowments Act (XX of 1863), s. 12.*] The right to bring suits for the recovery of the property of a religious or charitable institution is vested in the trustee or manager of such institution, unless he is precluded by any special law from exercising it. There is nothing in the Religious Endowments Act to take away such powers. Section 12 relates only to the rents of property transferred by Government to the committees of such institutions. SANKARA MURTI MUDALIAR *v.* CHIDAMBARA NADAN.

[17 Mad. 143

(11) FRAUD.

17.—*Decree obtained by fraud—Suit to set aside decree and sale in execution on the ground of fraud—Civil Procedure Code* (1882), *ss.* 108 *and* 244.] A suit will lie to set aside a decree, and a sale held in execution of such decree, when both the sale and the decree are impeached on the ground of fraud. *Mohendro Narain Chaturaj* v. *Gopal Mondul*, I. L. R. 17 Calc. 769; and *Jagan Nath Gorai* v. *Watson*, I. L. R. 19 Calc. 341, distinguished. ABDUL MAZUMDAR *v.* MAHOMED GAZI CHOWDHRY.

[21 Calc. 605

18.—*Suit to set aside ex-parte decree and sale in execution thereof, on the ground of fraud—Res judicata—Effect of not appealing against an appealable order—Civil Procedure Code* (1882), *ss.* 13, 108, 244 *and* 311.] The plaintiff, having applied unsuccessfully under ss. 108 and 311 of the Civil Procedure Code to set aside an *ex-parte* decree against him and the sale of his property in execution thereof on the ground of fraud, and without preferring an appeal against the order rejecting his application under s. 108 of the Code, instituted this suit praying for the same relief. The Subordinate Judge dismissed the suit as not maintainable:—*Held*, that such a suit was maintainable, and that ss. 13 and 244 of the Civil Procedure Code were no bar thereto. The fact that his application under s. 108 was unsuccessful, and that he did not appeal against the order rejecting that application, did not disentitle him from prosecuting his remedy by suit on the ground of fraud. *Abdul Mazumdar* v. *Mohomed Gazi Chowdhry*, I. L. R. 21 Calc. 605, approved:—*Held*, also, that when there is an appeal against a decision, the effect of not appealing is that the decision holds good for what it is worth; so far as concerns any other modes of relief available, the person not appealing is in no worse position than if he had appealed and failed. *Raj Kishen Mookerjee* v. *Modhoo Soodun Mundle*, 17 W. R. 413, distinguished. PRAN NATH ROY *v.* MOHESH CHANDRA MOITRA.

[24 Calc. 546

19.—*Suit in Recorder's Court to set aside for fraud decree obtained in Small Cause Court—Perjury.*] Where a decree has been obtained by a fraud practised on another, by which that other has been prevented from placing his case before the tribunal, which was called upon to adjudicate upon it, in the way most to his advantage, the decree is not binding upon him and may be set aside in a separate suit, and not only by an application made in the suit in which the decree was passed to the Court by which it was passed. But it is not the law that because a person against whom a decree has been passed alleges that it is wrong, and that it was obtained by perjury committed by or at the instance of the other side (which is fraud of the worst description) that he can obtain a rehearing of the questions in dispute in a fresh suit, by merely changing the form in which he places it before the Court, and alleging in his plaint that the first decree was obtained by the perjury of the person in whose favour it was given. In this case a suit brought in the Court of the Recorder of Rangoon to set aside a decree of the Court of Small Causes at Rangoon on the ground that it had been obtained by fraud was held under the circumstances of the case to be not maintainable. MAHOMED GOLAB *v.* MAHOMED SULLIMAN.

[21 Calc. 612

(12) INJURY TO ENJOYMENT OF PROPERTY.

20.—*Burial ground—Land belonging in common to all the Mahomedan inhabitants of a village—Encroachment by some of the Mahomedans—Right of suit of some members of a community.*] Where certain Mahomedans of a village brought a suit against other Mahomedans of the same village for the removal of a wall built by the defendants upon land which was found to belong in common to all the Mahomedan inhabitants of the village for the purpose of a burial ground:—*Held*, that the defendants having erected the wall in dispute so as to exclude the plaintiffs from a part of the common land, there was a violation of the plaintiffs' right, and that therefore the plaintiffs were entitled to bring the suit for the removal of the wall. TANUDIN *v.* PANDU.

[18 Bom. 699

21.—*Mortgage of two portions of a house with a common party wall to two separate mortgagees—Interference with common wall by one of the mortgagees—Transfer of Property Act (IV of 1882), s. 76.*] The owner of a house, having built up a door which gave communication between one-half of the house and the other, mortgaged each half separately to separate mortgagees. One of such mortgagees re-opened the door communicating with the other mortgagee's portion of the house:—*Held*, that a good action would lie on behalf of the other mortgagee, against the mortgagee who had opened the door, to compel him to close it. LACHMI NARAIN *v.* JETHU MAL.

[16 All. 386

22.—*Effect of an embankment erected by a superior riparian owner on the cultivation of lands lower down the stream—Cause of action.*] The defendants, being owners of land on the banks

RIGHT OF SUIT—*continued.*

(12) INJURY TO ENJOYMENT OF PROPERTY—*concluded.*

of a jungle stream, raised embankments which prevented their lands from being flooded, but caused the stream to overflow the land of the plaintiff situated lower down the stream. In an action by the plaintiff against the defendants for damages, it appeared that it was not reasonably practicable for the defendants to defend their lands from inundation by any means other than those adopted which would not have caused damage to the plaintiff:—*Held*, that no actionable wrong had been committed by the defendants, and that the suit was consequently not maintainable. GOPAL REDDI *v.* CHENNA REDDI.

[18 Mad. 158

23.—*Right to access of light and air—Suit by person who had not obtained an easement by prescription—Easement—Trespass.*] The owner of a house, the light coming to which is obstructed by an erection made upon adjoining land by a person who, *qud* such adjoining land, is a trespasser, may possibly have an action against the person causing obstruction, even though he has not obtained by prescription an easement of light. But where the person causing such obstruction is the rightful owner of the adjoining land, or acting with the permission of the owner, no such action as aforesaid will lie against him unless the plaintiff has acquired an easement. *Jeffries* v. *Williams*, 20 L. J. Ex. 14; and *Jootoor Achanna Vanamala* v. *Venkamma*, 5 Mad. L. J. 25, distinguished. DHUMAN KHAN *v.* MUHAMMAD KHAN.

[19 All. 153

(13) INTESTACY.

24.—*Suit by one executor de son tort against another — Letters of administration—Succession Act (X of 1865), ss. 190 and 266—Administration suit.*] *D*, a Parsi, died intestate in 1877, leaving him surviving a widow, three daughters, and two sons, *A* and *F*. On *D's* death his sons without taking out administration assumed the management of the estate, and each received sums of money on account of it. The widow and daughters of the deceased obtained letters of administration, but limited to the extent of their interest in the estate. In 1888, *A* brought a suit against his brother *F* and the other members of the family to recover out of the estate a certain sum of money advanced by him to *D*:—*Held*, that the estate being unrepresented, the suit could not be maintained (s. 190 of Act X of 1865). The letters of administration issued to the widow and daughters of the deceased being limited only to the extent of their shares in the estate, were not letters of administration such as are meant by s. 190 of the Indian Succession Act (X of 1865):—*Held*, also, that the only course open to the plaintiff was to take proceedings for the appointment of an administrator of the estate who would either administer it by the payment of the debts and the distribution of the surplus (if any) amongst the heirs, after taking an account of all property

RIGHT OF SUIT—*continued.*

(13) INTESTACY—*concluded.*

already received out of it by the creditors or heirs, or who could be compelled to do so by an administration suit. FRAMJI DORABJI GHASWALA *v.* ADARJI DORABJI GHASWALA.

[18 Bom. 337

(14) MONEY LENT.

25.—*Insufficiently stamped document—Suit on hatchitta for money lent—Evidence Act, s. 91—Whether a suit maintainable if brought upon an insufficiently stamped document, where the defendant admitted the loan.*] In a suit brought in the Court of Small Causes on a *hathchitta* bearing a stamp of one anna, the defendant admitted the loan, but pleaded payment. The Judge coming to the conclusion that the document sued upon was a promissory note, and should have been stamped with a two-anna stamp, refused to admit it in evidence. He also came to the conclusion that the plaintiff had no cause of action independently of the document, and dismissed the suit:—*Held*, that the plaintiff had a cause of action independently of the document:—*Held*, also, that an implied contract to repay money lent always arises from the fact that the money is lent, even though no express promise, either written or verbal, is made to repay it. Therefore, in a case where the defendant admits the loan, and has not repaid it, the plaintiff may maintain an action against him for breach of his implied promise or contract, entirely independent of any security which may have been given for the advance. *Akbar* v. *Sheikh Khan*, I. L. R. 7 Calc. 256, explained; *Golap Chand Marwaree* v. *Mohokoom Kooaree*, I. L. R. 3 Calc. 314, followed. PRAMATHA NATH SANDAL *v.* DWARKA NATH DEY.

[23 Calc. 851

(15) OBSTRUCTION TO PUBLIC HIGHWAY.

26.—*Suit to enforce a right to conduct a religious procession along a public road—Special damage.*] A civil action will not lie to enforce a right to conduct a religious procession along a public road without an allegation of some personal loss or damage to the plaintiff. *Satku* v. *Ibrahim*, I. L. R. 2 Bom. 457, followed. SUJAUDIN *v.* MADHAVDAS.

[18 Bom. 693

See MOHAMED ABDUL HAFIZ *v.* LATIF HOSEIN.

[24 Calc. 524

27.—*Suit to remove obstruction in public right of way—Special injury—Cause of action—Jurisdiction of Civil Court.*] In a suit for the removal of an obstruction in a public pathway, it was found by the Courts below that the plaintiffs were deprived of the only means of grazing their cattle by the obstruction, and that they lost some cows thereby. It was contended, on behalf of the defendant on second appeal, that such damage would not entitle the plaintiffs to maintain a suit in the Civil Court:—*Held*, that the injury caused to the plaintiffs, by the obstruction of the way

RIGHT OF SUIT—*continued.*

(15) OBSTRUCTION TO PUBLIC HIGHWAY —*concluded.*

leading from the village where they resided to that in which they had their fields and pastures, was peculiar to them and to their calling, and it caused them substantial loss of time and inconvenience; and that it was sufficient to entitle the plaintiffs to maintain the action:—*Held*, also, that the death of the cows was too remotely and indirectly connected with the obstruction to furnish a cause of action. *Winterbottom* v. *Lord Derby*, L. R. 2 Exch. 316; *Richet* v. *Metropolitan Railway Co.*, L.R. 2 H.L. 175; *Cook & Co.* v. *Mayor and Corporation of Bath*, L. R. 6 Eq. 177; *Baroda Prasad Mostafi* v. *Gora Chand Mostafi*, 3 B. L. R. A. C. 295; 12 W. R. 160; *Gehanaji* v. *Ganpati*, I. L. R. 2 Bom. 469; *Raj Koomar Singh* v. *Sahebzada Roy*, I. L. R. 3 Calc. 20; *Blagrave* v. *Bristol Water Works Co.*, 1 H. & N. 369; and *Rose* v. *Miles*, 4 M. & S. 101, referred to. ABZUL MIAH *v.* NASIR MAHOMMED.

[22 Calc. 551

(16) OFFICE OR EMOLUMENT.

28.—*Inam attached to the hereditary office of nattamgar—Enfranchisement of inam lands in favour of two persons—Suit by the holder of the office to recover all the land.*] *Inam* lands constituting the emolument of the office of *nattamgar* were enfranchised in favour of the plaintiff and defendant separately. In November, 1890, the defendant was informed that a *pottah* for half of the lands would be issued in his name, and it was so issued in the following May. In April, 1891 (after the resolution to enfranchise the lands was come to), the plaintiff was appointed to be the sole *nattamgar*, and he now sued in 1894 for the cancellation of the enfranchisement *pottah* issued to the defendant, and for the issue of a *pottah* in his own name in respect of the lands comprised therein and for possession of the lands:—*Held*, that the plaintiff was not entitled to the relief sought. SANKARA SUBBAYYAR *v.* RAMASAMI AYYANGAR.

[20 Mad. 454

(17) PRIVACY, INVASION OF.

29.—*Easement—Suit for injunction—Jurisdiction of Civil Court.*] The invasion of privacy by opening windows is not a wrong for which an action will lie. *Komathi* v. *Gurunada Pillai*, 3 Mad. 141, followed. AZUF *v.* AMEERUBIBI.

[18 Mad. 163

(18) PROPERTY AT DISPOSAL OF GOVERNMENT.

30.—*Property found by Police, and no claim being proved, placed at disposal of Government by order of Magistrate under Criminal Procedure Code* (1882), *s.* 524.] *Quære:* Whether a suit lies to recover property placed at the disposal of Government by an order of a Criminal Court under s. 524 of the Criminal Procedure Code. *In re Gholam Abid*, Prinsep's Criminal Procedure Code, 7th Ed., under s. 89; *Government of Bengal* v. *Surwar Jan*, 18 W. R. Cr. 33; *Bukkooree Singh* v. *Government*, 8 W. R. 207; and *Queen-Empress* v. *Tribhovan Manekchand*, I. L. R. 9 Bom. 131, referred to. SECRETARY OF STATE FOR INDIA *v.* VAKHATSANGJI MEGHRAJJI.

[19 Bom. 668

RIGHT OF SUIT—*concluded.*

(18) PROPERTY AT DISPOSAL OF GOVERNMENT—*concluded.*

(19) SALE IN EXECUTION OF DECREE.

31.—*Suit to have confirmed a sale set aside by Collector—Transfer of execution of a decree to Collector—Power of Collector—Civil Procedure Code* (1882), *ss.* 312, 320 *and* 588, *cl.* 16—*Rules framed by Government under s.* 320—*Jurisdiction of Civil Court—Sale in execution of decree.*] Certain property was sold in execution of a decree by the Collector, to whom the execution had been transferred under s. 320 of the Code of Civil Procedure (Act XIV of 1882). The Collector set aside the sale before the date of confirmation, on the sole ground that the judgment-debtor had, subsequent to the sale, made full payment of the sum decreed. Thereupon the auction-purchaser filed a suit for a declaration that the sale had been improperly set aside, and for a confirmation of the sale:—*Held*, that the suit would lie. Reading s. 312 with s. 311 of the Code of Civil Procedure, the suit was not barred under the last clause of s. 312, nor under s. 588, cl. 16:—*Held*, also, that the rules framed by Government under s. 320 of the Code only restricted the powers of the Court to interfere with the procedure of the execution of decrees transferred to the Collector. They did not come in the way of a party bringing a civil suit to establish his purchase:—*Held*, also, that the Collector had no power under s. 311 of the Code to set aside the sale and receive payment from the judgment-debtor. MATHURADAS *v.* PANHALAL.

[19 Bom. 216

RIGHT OF WAY.

See EASEMENT.

[18 Bom. 382

—Easement — Purchase of land adjoining purchaser's land— Way of access— Way of necessity— Deed of sale, Construction of.] A person purchasing a plot adjoining his own land, and having access to the plot through his land, cannot acquire a way of necessity over his vendor's land of which the plot formed a part. The fact that if the plot had been sold to a third person, he would have acquired a way of necessity, does not affect the question. Where a portion of an estate is sold, a right of way leading to such portion may be created by the use of general words, provided that the circumstances existing at the time of the sale were such as to justify the belief that such was the intention of the parties. Where the words used in a Marathi deed of sale were "*sarva hakk wa sambandh*" (*i.e.*, all rights and accompaniments):—*Held*, that the words in themselves, apart from the circumstances at the time of the sale, did not include a right of way over the vendor's property as con-

RIGHT OF WAY—*concluded.*

veyed along with the portion of the land sold; but if there was an old path leading across the vendor's adjoining ground to the plot sold, and the purposes for which the plot was sold, and the conduct of the parties, were such as to justify an inference that by the use of these words it was the intention of the parties to convey the right to use the path, it would be open to the Judge to find as a fact that such was the intention. MUNICIPALITY OF THE CITY OF POONA *v.* VAMAN RAJARAM GHOLAP.

[19 Bom. 797

RIGHT TO USE OF WATER.

See EASEMENT.

[18 Mad. 320

—*Water rights for irrigation where a stream flows through separate estates—Relative rights of upper and lower proprietors on the banks to the use of the water—Issues not raising actual rights.*] A riparian owner, where a stream flows in a channel down from a property higher up, is entitled to the flow of water without interruption, and without substantial diminution caused by the upper proprietor, who may for legitimate purposes withdraw so much only of the water as will not materially lessen the downward flow on to his neighbour's land. In this suit the upper proprietor claimed the right to dam up a stream on his own estate, and to impound so much of its water as he might find convenient for irrigation, leaving only the surplus, if any, for the use of the proprietors below. He has no such right, in the absence of a right obtained by him in virtue of contract with the lower proprietors, or acquired by him as a consequence of prescriptive use. His common law right is to take for the purpose of irrigation so much water only as can be abstracted without materially diminishing what is to be allowed to descend. What quantity of water can be abstracted and used without infringing that essential condition, must, in all cases, be a question of the circumstances, depending mainly upon the size of the stream and the proportion which the water taken bears to its entire volume. In this suit, the upper proprietor's claim having been put too high, the real question as to the proportion of his share had been omitted. No issue had raised it, and no evidence had been given to determine it approximately. The Court of first instance and the first Appellate Court had attempted to decree what they considered would be the just proportion, but the High Court had rightly pointed out that there had been no materials before the Courts upon which a right to a more limited kind than that which had been in excess claimed could be decreed to the upper proprietor; and the suit had been rightly dismissed. DEBI PERSHAD SINGH *v.* JOYNATH SINGH.

[24 Calc. 865

[L. R. 24 I. A. 60

RIOTING.

See CHARGE—FORM OF CHARGE.

[21 Calc. 827, 955

RIOTING—*continued.*

See CHARGE TO JURY—MISDIRECTION.

[21 Calc. 955

See JURISDICTION OF CRIMINAL COURT—OFFENCE COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.

[19 Bom. 105

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[24 Calc. 429

See UNLAWFUL ASSEMBLY.

[22 Calc. 276

——, Giving provocation with intent to commit.

See PENAL CODE, S. 153.

[18 Bom. 758

1.—*Rights of true owners against person in wrongful possession—Affray, Evidence as to nature of.*] When a party is in possession of land for four or five days, though it may be in wrongful possession, another party, although claiming to be the rightful owner, is not entitled to go in force to turn him out, much less is he entitled to take armed men with him for that purpose. In an affray specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it; and persons who, as in this case, punted the boats on which the fight took place, and in whose interests the fight on the boats took place, were held to be just as blameworthy as the men who struck the blows. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[21 Calc. 392

2.—*Unlawful assembly—Right of private defence of property—Causing grievous hurt in furtherance of common object—Penal Code (Act XLV of 1860), ss. 97, 99, 147, 149 and 325.*] The accused receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt:—*Held* that, if the accused were rightfully in possession of the land and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required and using such force or violence as was necessary to prevent the aggression:—*Held*, also, that under such circumstances they could not rightly be held to be members of an unlawful assembly. *Queen-Empress* v. *Narsang Pathahbai*, I. L. R. 14 Bom. 441; *Birjoo Singh* v. *Khub Lall*, 19 W. R. Cr. 66; and *Shunkur Singh* v. *Burmah Mahto*, 23 W. R. Cr. 25,

RIOTING—*concluded.*

followed; *Ganouri Lal Dass* v. *Queen-Empress*, I. L. R. 16 Calc. 206, distinguished. PACHKAURI *v.* QUEEN-EMPRESS.

[24 Calc. 686

RIPARIAN OWNERS.

See MADRAS FOREST ACT, S. 10.

[20 Mad. 279

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

[18 Mad. 158

See RIGHT TO USE OF WATER.

[24 Calc. 865
[L. R. 24 I. A. 60

"RISK NOTE."

See RAILWAYS ACT, 1890, S. 72.

[18 All. 42

RIVER, NAVIGABLE AND TIDAL.

See EVIDENCE—CIVIL CASES—MAPS.

[22 Calc. 252

See FISHERY, RIGHT OF.

[22 Calc. 252

ROAD-CESS, SALE FOR ARREARS OF.

See BENGAL TENANCY ACT, S. 65.

[21 Calc. 722

ROMAN CATHOLIC CHURCH.

See CHURCH.

[17 Mad. 447

RULE TO SHOW CAUSE.

See PRACTICE—CRIMINAL CASES—REVISION.

[21 Calc. 827

— Grounds for granting rule — Practice — Discretion of Court hearing a rule.] Although rules to show cause are frequently granted on particular grounds, the form of any rule granted would ordinarily be such as to leave the action which the Courts should take in case the conviction is set aside to the discretion of the Court which hears the rule. Where a rule was granted "to show cause why the conviction should not be set aside, and the case sent back for retrial," and it came on for hearing before a Bench other than that which had granted it:—*Held*, that the terms of the rule did not prevent the Bench hearing it from discharging the accused. MILAN KHAN *v.* SAGAI BEPARI.

[23 Calc. 347

RULES MADE BY LOCAL GOVERNMENT.

See PORTS ACT, S. 6.

[17 Mad. 118, 397

RULES MADE UNDER ACTS.

——, Bengal Tenancy Act, Rule 25.

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[23 Calc. 723

——, Civil Procedure Code, s. 320.

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[19 Bom. 216

See VALUATION OF SUIT—APPEALS.

[23 Calc. 723

——, Opium Act.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[19 Bom. 626

RULES OF BOARD OF REVENUE.

See PRE-EMPTION, CONSTRUCTION OF—WAJIB-UL-ARZ.

[17 All. 447

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[16 All. 40
[17 All. 226

RULES OF HIGH COURT, BOMBAY.

——, Rule 10, cl. (r).

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.

[18 Bom. 65

RULES OF HIGH COURT, CALCUTTA.

——, Part II, Chap. VIII, Rule 17.

See LIMITATION ACT, ART. 168.

[23 Calc. 339

See REVIEW—POWER TO REVIEW.

[23 Calc. 339
[24 Calc. 350

——, Rule 365 of Rules and Orders (Belchambers), Original Side.

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR.

[24 Calc. 437

RULES OF HIGH COURT, MADRAS.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE —LEAVE TO SUE.

[18 Mad. 236

—— under s. 13 of Charter Act (24 and 25 Vict. cap. 104).

See LETTERS PATENT, HIGH COURT, CL. 15.

[17 Mad. 100

RULES AND REGULATIONS OF DIVORCE COURT IN ENGLAND.

——, Rule 158.

See DIVORCE ACT, s. 35.

[19 Bom. 293

RULES AND REGULATIONS UNDER STATUTE 2 AND 3, WILL. IV, CAP. 51.

See PRACTICE — CIVIL CASES — ADMIRALTY COURT.

[22 Calc. 511

RYOT.

——, Definition of.

See BENGAL TENANCY ACT, s, 5, CL. 2.

[21 Calc. 129

See RIGHT OF OCCUPANCY — ACQUISITION OF RIGHT.

[24 Calc. 272

[L. R. 23 I. A. 158

——, Non-occupancy.

See BENGAL TENANCY ACT, s. 20.

[24 Calc. 207

——, Status of, Question as to.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776

SALARY.

See ATTACHMENT — SUBJECTS OF ATTACHMENT—SALARY.

[24 Calc. 102

See INSOLVENCY—AFTER-ACQUIRED PROPERTY.

[19 Bom. 232

SALE.

See MAHOMEDAN LAW—MORTGAGE.

[20 Bom. 116

See MORTGAGE—FORM OF MORTGAGES.

[21 Calc. 882
L. R. 21 I. A. 96
21 Bom. 528
[19 All. 434

——, Commission.

See CLAIM TO ATTACHED PROPERTY.

[21 Bom. 287

See CONSIGNOR AND CONSIGNEE.

[21 Bom. 287

——, Conditional.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[20 Mad. 354

SALE—*concluded.*

See VENDOR AND PURCHASER—CONDITIONAL SALES.

[17 All. 451

——, Confirmation of.

See LIMITATION ACT, ART. 136.

[23 Calc. 49

——, Power of.

See MORTGAGE — CONSTRUCTION OF MORTGAGES.

[20 Bom. 296

See MORTGAGE—POWER OF SALE.

[21 Bom. 267

See STAMP ACT, SCH. I, ART. 44.

[21 Calc. 241

SALE FOR ARREARS OF RENT.

		Col.
1.	Incumbrances	... 1138
2.	Rights and Liabilities of Purchasers	1142
3.	Surplus Proceeds of Sale	... 1142
4.	Setting aside Sale	... 1143
	(*a*) General Cases	... 1143
	(*b*) Irregularity	... 1143

See BENGAL TENANCY ACT, s. 173.

[21 Calc. 554

——, Money paid to protect property from.

See VOLUNTARY PAYMENT.

[22 Calc. 28

——, Payment to set aside.

See CO-SHARERS — GENERAL RIGHTS IN JOINT PROPERTY.

[22 Calc. 800

(1) INCUMBRANCES.

1.—*Bengal Regulation VIII of* 1819, *s.* 11—"*Defaulting proprietor*"—"*Defaulter*"—*Incumbrances created by previous patnidar—Mokurari lease, Avoidance of—Voidable incumbrances.*] In 1839, a *mokurari* lease was granted to the predecessors of the defendants by the then *patnidar* of a *patni* created in 1819. In 1848, the *patni* was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the *mokurari*. In 1885, the *patni* was again brought to sale under the same Regulation for arrears of rent, the default being made by one of the successors of the purchaser in 1848, and at this sale it was purchased by the plaintiffs. In 1890, the plaintiffs sued to set aside the *mokurari* lease, contending that they were, by virtue of their purchase, entitled to avoid all incumbrances created by any *patnidar*, and were not restricted to avoiding merely those created by the immediate defaulter. The defendants contended that the provisions of s. 11 of the Regulation restricted the plaintiffs to avoiding incumbrances, the acts of the immediate

SALE FOR ARREARS OF RENT—*continued.*

(1) INCUMBRANCES—*continued.*

defaulter, and that, as the purchaser in 1848, and his successors in title previous to the defaulter in 1885, had not interfered with the *mokurari* lease, the plaintiffs could not have it set aside:—*Held* (RAMPINI, J., dissenting), that the plaintiffs were entitled to avoid the *mokurari*:—*Held, per* GHOSE and BEVERLEY, JJ., that having regard to the policy and principle of the Regulation, a zemindar is entitled to bring a *patni* to sale in the same condition in which it was at the time of its creation, and that the purchaser is therefore entitled to avoid all incumbrances imposed upon it since its creation, whether by the actual defaulter or by any of his predecessors. *Per* GHOSE, J.—The *mokurari* lease was an incumbrance upon the *patni*, but inasmuch as s. 11 distinguishes in cls. 1 and 2 between "incumbrances" and "leases," it might be regarded as the latter. If treated as an incumbrance it must be held to have *accrued upon* the *patni* by reason of the defaulting zemindar not having set it aside, though entitled to do so within the meaning of those words in cl. 1. If treated as a lease the words in cl. 2, "holder of the former tenure," are wide enough to include any *patnidar* whether the defaulting or a previous holder. *Per* BEVERLEY, J.—The words "defaulting proprietor" used in cl. 1 of s. 11 must be read as the "proprietor of the tenure in default," and were not intended to be restricted to the particular proprietor for whose default the tenure is brought to sale, and the word "defaulter" used in cl. 2 of that section must be given a similarly wide interpretation. GOPENDRO CHUNDER MITTER *v.* MOKADDAM HOSSAIN.

[21 Calc. 702

2.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 161—*Exchange of land—Suit for recovery of possession of land.*] Exchange of land is an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. CHUNDRA SAKAI *v.* KALLI PROSANNO CHUKERBUTTY.

[23 Calc. 254

3.—*Bengal Tenancy Act* (*VIII of* 1885), *ss.* 161 *and* 171—*Payment by person interested to prevent sale — Mortgage — Incumbrance.*] A mortgage created by the operation of s. 171 of the Bengal Tenancy Act (VIII of 1885) is not an incumbrance within the meaning of s. 161 of that Act, and is not liable to be annulled as such at the instance of a purchaser of a holding at a sale in execution of a decree for arrears of rent. PASUPATI MOHAPATRA *v.* NARAYANI DASSI.

[24 Calc. 537

4.—*Bengal Tenancy Act* (*VIII of* 1885), *ss.* 161 *and* 167—*Notice—Mortgage.*] A sale purporting to be under s. 161 and the following sections of the Bengal Tenancy Act (VIII of 1885) does not *ipso facto* cancel incumbrances. Notice *must* be given under s. 167 according to the procedure laid down in that section. BENI PROSAD SINHA *v.* REWAT LALL.

[24 Calc. 746

SALE FOR ARREARS OF RENT—*continued.*

(1) INCUMBRANCES—*continued.*

5.—*Bengal Tenancy Act* (*VIII of* 1885), *ss.* 65, 148, 161, 167 *and* 176—*Estoppel—Mortgagor and mortgagee—Order in execution-proceedings against mortgagee—Res judicata—Decree obtained before Bengal Tenancy Act came into force—Execution under former Rent Law—Incumbrance—Mode of annulling incumbrance—Sale for arrears of rent—Charge of rent as first charge on tenure—Sale in execution of mortgage-decree—Decree for sale.*] By a mortgage-bond, dated the 22nd August, 1884, and registered, *K* created a charge in favour of the plaintiff on six *taluks* for repayment of the mortgage-debt, in respect of two of which *taluks* suits had been brought by the zemindar for arrears of rent, and decrees obtained on the 6th June, 1885, before the coming into operation of the Bengal Tenancy Act (VIII of 1885). After that Act had come into force, these decrees were assigned to *G*, a *benamidar* for *P*, for execution, and on his seeking to execute them, he was opposed by *K* on the ground that, as the transfer of the decree by assignment, and the subsequent application for execution, were made after the Bengal Tenancy Act had come into force, and as *G* the assignee had acquired no interest in the *taluks*, his application for execution could not be granted under s. 148, cl. (*h*) of that Act. On the 9th July, 1886, the Court overruled this objection, and ordered execution to issue, holding that as the decrees in the rent-suits were passed before the Tenancy Act came into operation, the execution should proceed under the old law. In execution of the decrees, the two *taluks* were put up for sale, and purchased by *G* as *benamidar* for *P*. In a suit brought by the plaintiff, the mortgagee, against *K* and *P* (and others representing others of the six *taluks*), it was contended, so far as the two *taluks* were concerned, that the plaintiff, though not a party to the execution proceedings, was bound by the order of the 9th July, 1886, made in the course of those proceedings; that *P* having purchased the two *taluks* at sales for arrears of rent had acquired them free from all incumbrances; that the plaintiff's mortgage was not a notified incumbrance within the meaning of s. 161 of the Tenancy Act; and that he was therefore not entitled to have his mortgage lien declared against the two *taluks*:—*Held* (affirming the judgment of the lower Appellate Court), that the plaintiff was not bound by the order of the 9th July, 1886, *K*, the mortgagor, not representing his interest sufficiently to make that order binding on the plaintiff as mortgagee. *Dooma Sahoo* v. *Joonarain Lall*, 12 W. R. 362; 4 B. L. R. A. C. 27 note; *Tirbhobun Singh* v. *Jhono Lall*, 18 W. R. 206; *Bonomali Nag* v. *Koylash Chunder Dey*, I. L. R. 4 Calc. 692; *Madho Pershad Singh* v. *Purshan Ram*, I. L. R. 4 Calc. 520; and *Sitaram* v. *Amir Begam*, I. L. R. 8 All. 324, referred to. The proprietor of an estate cannot be said to represent the whole estate after he has mortgaged it; and this distinguishes the case of a mortgagor as representing an estate from that of a Hindu widow, or *shebait*, who are held to repre-

SALE FOR ARREARS OF RENT— *continued.*

(1) INCUMBRANCES—*concluded.*

sent the estate so as to bind the reversioner or the succeeding *shebait*. The interest of a mortgagee in an estate may be greater than that left in the mortgagor, or, as in the present case, where it was no part of the mortgagor's interest to protect the incumbrance, the interests of the mortgagor and mortgagee are not identical; the balance of justice and expediency, therefore, is in favour of not allowing a mortgagee to be bound by an order made against his mortgagor. Nor is there anything in the provisions of the rent-law against that view. A decree for rent of a tenure obtained against the registered tenant binds an unregistered transferee of the tenure, who can show no sufficient cause for not registering his name, and may be enforced by sale of the tenure [*Sham Chand Kundu* v. *Brojonath Pal Chowdhry*, 12 B. L. R. 484; 21 W. R. 94]; but whether any such sale was in sufficient conformity with the rent-law to be operative in annulling a prior mortgage, or other incumbrance, must be determined in the presence of the party claiming the benefit of the incumbrance. *Tirbhobun Singh* v. *Jhono Lal*, 18 W. R. 206; and *Madho Pershad Singh* v. *Purshan Ram*, I. L. R. 4 Calc. 520, referred to:—*Held*, also, that though the rent-decrees were passed under the old rent-law, the assignment and the application by the assignee for execution having been made after the Bengal Tenancy Act came into force, cl. (*h*) of s. 148 of that Act applied to the execution proceedings [*Ranjit Singh* v. *Meherban Koer*, I. L. R. 3 Calc. 663], and the sale on such an application, which is prohibited by that clause, must be held to be no sale under the rent-law. The clause does not affect any vested right. All that it prohibits is an application for the enforcement of the decree by an assignee, and that is a matter of procedure. If any right is affected, it is not a right of the decree-holder, but the right of the assignee of the decree to apply for execution, and in this case there was no such assignee before the Bengal Tenancy Act came into force. The mode provided by s. 167 of the Bengal Tenancy Act is the only mode in which incumbrances can be annulled by purchasers of tenures for arrears of rent, and that mode not having been followed in this case, the incumbrance on the two *taluks* was not annulled. Section 65 of the Tenancy Act, which provides that "the tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon," only intends what is laid down in Chap. XIV of the Act, namely, that the charge should be enforced by the sale of the tenure or holding free of incumbrances; and if in any case the decree for rent either has not been, or cannot be, enforced by the sale of the tenure, the charge created by s. 65 cannot be enforced in any other way. No reason, therefore, could be shown under that section for making the sale in satisfaction of the plaintiff's mortgage, subject to the rent-decree as a first charge. SOSHI BHUSUN GUHA *v.* GOGAN CHUNDER SHAHA.

[22 Calc. 364

SALE FOR ARREARS OF RENT— *continued.*

(2) RIGHTS AND LIABILITIES OF PURCHASERS.

6.—*Liability of auction-purchaser for arrears of rent prior to purchase—Bengal Tenancy Act (VIII of* 1885), *ss.* 65 *and* 169, *cl.* (*c*)—*Rent, Suit for.*] The plaintiffs sued the first five defendants for arrears of rent due in respect of a certain tenure, and obtained a decree on the 16th of April, 1888. In execution of that decree the tenure was sold on the 8th April, 1891, the defendants No. 6, 7 and 8 being the auction-purchasers. On the 18th of April, 1891, the plaintiffs sued all eight defendants for the arrears of rent which had become due between the 16th April, 1888, and the 8th April, 1891:—*Held*, that the auction-purchasers (defendants 6, 7 and 8) were not liable, the arrears of rent sued for having become due prior to their purchase. FAEZ RAHAMAN *v.* RAMSUKH BAJPAI.

[21 Calc. 169

7.—*Sale on basis of decree on compromise—Auction-purchaser, Title of—Liability of purchaser for rent accruing due after his purchaser, but before confirmation of sale—Effect of compromise as against purchaser—Rent, Accrual of—Bengal Tenancy Act, s.* 53.] A tenant, when sued for arrears of rent of a *jote*, compromised the case by executing a *solehnama* agreeing to pay rent at 13 annas per *bigha* on 4,300 *bighas*. Subsequently the *jote* was sold, in execution of a decree passed on the basis of the *solehnama*, and was purchased by the defendant on the 20th March, 1889, the sale being confirmed on the 7th August, 1889. In a suit instituted by the landlord against the auction-purchaser for arrears of rent for the whole year 1296 (13th April, 1889, to 12th April, 1890), *held*, that the purchaser was liable for the whole instalment of rent accrued due after the date of his purchase, but before the confirmation of the sale, notwithstanding that his title was not perfected until the latter date. Rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or, in the absence of any contract, according to the general law laid down in s. 53 of the Bengal Tenancy Act:—*Held*, also, that he was liable for rent under the terms of the *solehnama* irrespective of any question as to whether the quantity of land there mentioned was correct or not. SATYENDRA NATH THAKUR *v.* NILKANTHA SINGHA.

[21 Calc. 383

(3) SURPLUS PROCEEDS OF SALE.

8.—*Transfer of Property Act (IV of* 1882), *s.* 73—*Rights of purchasers—Mortgage.*] Section 73 of the Transfer of Property Act only gives a right to the mortgagee over the residue of the sale-proceeds, and refers to cases where the law otherwise provided that the effect of the sale is to nullify a mortgage: it is not intended in any way to enlarge the interest of the purchaser at a sale for arrears of revenue or rent. *Prem Chand Pal* v. *Purnima Dasi*, I. L. R. 15 Calc. 546, referred to. BENI PROSAD SINHA *v.* REWAT LALL.

[24 Calc. 746

SALE FOR ARREARS OF RENT—*concluded.*

(4) SETTING ASIDE SALE.

(*a*) GENERAL CASES.

9.—*Civil Procedure Code* (1882), *s.* 310*A*—*Civil Procedure Code Amendment Act* (*V of* 1894)—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 174.] Section 310A of the Code of Civil Procedure applies to the sale of a tenure in execution of a decree for its own arrears. JANARDHAN GANGULI *v.* KALI KRISTO THAKUR.

[23 Calc. 393

KRISHNADHAN NATH *v.* DAMAYANTI DEVI.

[23 Calc. 396 note

BEHARY LALL SEAL *v.* RUSSICK CHUNDER PAL.

[23 Calc. 396 note

(*b*) IRREGULARITY.

10.—*Sale after due and proper notice set aside as irregularly conducted—Second sale without fresh notice—Suit to set aside second sale—Madras Rent Recovery Act* (*Madras Act VIII of* 1865), *ss.* 18, 39 *and* 40.] A landlord attached his tenant's holding for arrears of rent in 1889, and within the time prescribed by the Madras Rent Recovery Act, s. 18, put in an application for sale to the Collector and otherwise complied with the procedure prescribed by the Act. The land was sold, but the sale was set aside as having been irregularly conducted. The landlord then made in 1894 an application to the Collector for a fresh sale (which was granted); a fresh sale took place without a fresh notice being given to the tenant under s. 39 of the intention to sell. The tenant now sued to have this sale set aside:—*Held*, that a fresh notice was not necessary, and that the plaintiff was not entitled to have the sale set aside. OLIVER *v.* ANANTHARAMAYYAR.

[20 Mad. 498

SALE FOR ARREARS OF REVENUE.

Col.

1. Incumbrances ...1144
2. Purchasers, Rights and Liabilities of 1145
3. Deposit to Stay Sale ...1146
4. Setting aside Sale ...1146
   - (*a*) Irregularity ...1146
   - (*b*) Other Grounds ...1147

See BENAMI TRANSACTION — GENERAL CASES.

[18 Mad. 469

See MADRAS REVENUE RECOVERY ACT, s. 38.

[17 Mad. 134

[20 Mad. 253, 494

See MADRAS REVENUE RECOVERY ACT, s. 59.

[17 Mad. 189

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

[20 Bom. 492

SALE FOR ARREARS OF REVENUE —*continued.*

(1) INCUMBRANCES.

1.—*Act XI of* 1859, *ss.* 37 *and* 53—*Adverse possession—Limitation.*] The plaintiff had been proprietor of an estate which was sold for arrears of Government revenue and repurchased from the then purchaser by the plaintiff in 1886. He applied under Chap. X of the Bengal Tenancy Act for the measurement of the estate and the preparation of a record of rights, and the Revenue Officer deputed for these purposes found that a portion of the estate held by the defendant was *mal* land, though it was held as *lakhiraj* under certain *sanads*, and as he also found that no rent had ever been paid for it, it was entered on the record of rights as *mal* land held under those *sanads* as *lakhiraj*. The Special Judge on appeal by the plaintiff held that the land having been found to be *mal* should have been entered as *mal* land unassessed with rent. In a suit to have the land assessed with rent, it was found that the *sanads*, under which the defendant claimed to hold, were granted not by any predecessor in title of the plaintiff, and were of a date anterior to the Permanent Settlement:—*Held*, that the adverse possession set up by the defendant was, within the meaning of s. 53 of Act XI of 1859, an incumbrance subject to which the plaintiff, as a proprietor whose estate had been sold, took it on repurchase. If such adverse possession therefore were sufficiently long, the suit would be barred by limitation. The plaintiff could not be regarded as a person who had acquired the estate "free from all incumbrances which may have been imposed upon it after settlement," as provided by s. 37 of Act XI of 1859, and could not therefore claim (as held by the lower Appellate Court) that his suit was not barred, having been brought within twelve years from the date of the sale for arrears of revenue. The case was remanded for findings whether the land was *mal* or *lakhiraj*, and whether the defendant's adverse possession was long enough to bar the suit. KARMI KHAN *v.* BROJO NATH DAS.

[22 Calc. 244

2.—*Right of auction-purchasers to annul incumbrances — Act XI of* 1859, *s.* 37 — *Suit to cancel under-tenures—Parties.*] The right that is given by s. 37 of Act XI of 1859 to the auction-purchaser of an entire estate in the permanently-settled districts of Bengal, Behar, and Orissa, sold for arrears of revenue, to avoid and annul an under-tenure, is a right that must be exercised by all the purchasers jointly where there are more purchasers than one. JATRA MOHUN SEN *v.* AUKHIL CHANDRA CHOWDHRY.

[24 Calc. 334

3.—*Purchaser at a revenue sale — Act XI of* 1859, *s.* 37—"*Entire estates*"—*Partition by Collector, Effect of—Estate Partition Act* (*Bengal Act VIII of* 1876), *s.* 123—"*Time of settlement.*"] A new estate created upon a partition by the Collector comes within the meaning of "entire

SALE FOR ARREARS OF REVENUE *continued.*

(1) INCUMBRANCES—*concluded.*

estate" in s. 37 of Act XI of 1859. The words "time of settlement" in that section mean the time when the contract was made with Government, and in the case of a permanently-settled estate mean the time of permanent settlement. A partition by the Collector merely apportions the amount of revenue; there is no *settlement* of the revenue in any sense at the time of such partition. KOOWAR SINGH *v.* GOUR SUNDER PERSHAD SINGH.

[24 Calc. 887

(2) PURCHASERS, RIGHTS AND LIABILITIES OF.

4.—*Decree setting aside sale, Effect of not executing within six months—Sale, Validity of—Right of auction-purchaser to bring suit for declaration of title and possession—Revenue Sale Law (Act XI of 1859), s. 34.*] Certain property having been sold for arrears of Government revenue, the defaulting tenant brought a suit in the Civil Court to have the sale set aside, and obtained a decree which he did not attempt to execute till after the expiry of six months from its date:—*Held*, in a suit brought by the auction-purchaser to recover possession of the share he had bought at the sale, that such non execution of the decree had the effect of restoring the sale so far as it concerned the defaulter, and that the plaintiff was entitled to succeed. ABDUL LOTIF *v.* YOUSUFF ALI.

[21 Calc. 255

5.—*Liability of purchaser at a sale, who enters into possession of the purchased property, to account for mesne profits to the person in whose favour the decree is subsequently reversed.*] A purchaser of property at a sale under the Madras Revenue Recovery Act, who enters into possession thereof, is in rightful possession until the decree is set aside. He is not therefore a trespasser and liable to make good any loss sustained by the rightful owner by being kept out of possession; but he is bound to account for mesne profits, the calculation of which is to be based on a proper discharge of the stewardship of the property. *Dakhina Mohun Roy Chowdhry* v. *Saroda Mohun Roy Chowdhry*, I. L. R. 21 Calc. 142; L. R. 20 I. A. 160, cited and followed. PERUMAL UDAYAR *v.* KRISHNAMA CHETTYAR.

[17 Mad. 251

6.—*Act XI of 1859, s. 54—Sale of share of Hindu widow—Effect of sale on reversionary interest.*] Where a share of an estate held by a Hindu widow was sold for arrears of revenue, it was contended that, under s. 54 of Act XI of 1859, the estate acquired by the purchaser lasted only during the lifetime of the widow:—*Held*, that the purchaser did not take any interest limited to the life of the widow, but that the entire share passed by the sale. DEBI DAS CHOWDUHRI *v.* BIPRO CHARAN GHOSAL.

[22 Calc. 641

SALE FOR ARREARS OF REVENUE *—continued.*

(3) DEPOSIT TO STAY SALE.

7.—*Madras Revenue Recovery Act (Madras Act II of 1864), s. 35—Payment of arrears of village revenue by the assignee of a mortgagee of portion of the village property in order to stay the sale — Defaulter — Registered and real owners.*] The plaintiff was assignee of a mortgagee of 38⅛th *pangus* in a village consisting of 51⅛th *pangus*. Having sued the executants of the mortgage and obtained a decree in 1885, he, in 1887 and 1888, paid certain arrears of revenue due from the village, in order to prevent its sale. In 1888, the plaintiff's 38⅛th *pangus* were sold in execution of the decree of 1885 to the 85th defendant subject to a charge for the amount of the revenue arrears paid by the plaintiff. In 1890, the plaintiff instituted the present suit to recover from the entire village and from the defendants Nos. 1 to 84 personally the amount of these arrears:—*Held*, that the 85th defendant, as also the 38⅛th shares purchased by him, were liable for the debt conjointly with the remaining shares and the other defendants, the plaintiff having by payment of the arrears acquired a charge upon the land under s. 35 of the Revenue Recovery Act; that not only registered proprietors but real owners and their holdings may be treated as defaulters within the meaning of s. 35 of that Act. *Seshagiri* v. *Pichu*, I. L. R 11 Mad. 457, followed. SRINIVASA THATHACHAR *v.* RAMA AYYAN.

[17 Mad. 247

(4) SETTING ASIDE SALE.

(*a*) IRREGULARITY.

8.—*Suit to set aside sale—Notice of sale, Publication of—Act XI of 1859, ss. 5 and 7.*] Where it was contended that a sale under Act XI of 1859 was bad on the ground that the notices prescribed by ss. 5 and 7 of that Act were not published, *held*, that there being no subsisting attachment on the property at the time it was sold, omission to issue notice under s. 5 did not vitiate the sale:—*Held* that, in the absence of proof that the plaintiff had sustained substantial injury on account of the omission to issue notice under s. 7, such omission did not invalidate the sale. MAHOMED AZHAR *v.* RAJ CHUNDER ROY.

[21 Calc. 354

9.—*Act XI of 1859, s. 5—Attachment by order of Civil Court—Latest day of payment, Attachment subsequent to.*] In a suit to set aside the sale of an estate for arrears of revenue, one of the grounds taken by the plaintiff was that the estate, which was under attachment by an order of the Civil Court at the time of the sale, was sold without due observance of the formalities prescribed by s. 5, Act XI of 1859. The date fixed for payment of the arrears for which the estate was sold was the 7th June, 1890. The date of attachment was the 2nd August following:—*Held*, that s. 5 of Act XI of 1859 provides for cases in which the attachment has been made at least fifteen days before the last date of payment for which it is sought to bring the estate to sale.

SALE FOR ARREARS OF REVENUE —*continued.*

(4) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*concluded.*

That section would not therefore apply to a case like the present, in which the attachment was after the last day of payment and after the estate had become liable to sale for arrears of Government revenue. *Bunwari Lall Sahu* v. *Mohabir Persad Singh*, 12 B. L. R. 297; L. R. 1 I. A. 89, referred to. NOWNIT LAL *v.* RADHA KRISTO BHUTTACHARJEE.

[22 Calc. 738

10.—*Bombay Land Revenue Code (Bombay Act V of 1879), ss. 56, 57, 150 and 153—Confirmation of sale by Collector—Omission of Collector to make—Declaration of forfeiture before sale.*] A sale of a holding for default of payment of assessment is not invalid although prior to the sale there has been no declaration of forfeiture by the Collector. The declaration is not so essentially a necessary preliminary of a sale that without it the sale is illegal and invalid. The fact that a sale has taken place is *primâ facie* evidence that forfeiture had been declared. GANPATI *v.* GANGARAM.

[21 Bom. 381

(*b*) OTHER GROUNDS.

11.—*Act XI of 1859, ss. 17, 25 and 33—Bengal Act VII of 1868, s. 2—Suit to set aside sale—Exemption from sale of land under attachment by Collector—Bengal Cess Act (Bengal Act IX of 1880)—Omission to specify ground of objection in revenue appeal.*] An estate sold for arrears of revenue had been previously brought to a judicial sale by a mortgagee, whose charge preceded that of a puisne incumbrancer, whom the present plaintiffs represented. It was not the consequence of the execution-sale that puisne incumbrancers, who were not parties to the prior mortgagee's suit, were displaced, or left with nothing but a claim against the surplus proceeds of the sale, if any; and, on the facts, the present plaintiffs had a mortgagee's interest in the estate sold by the Collector, entitling them to sue to have the sale for default in payment of revenue set aside, as contrary to Act XI of 1859. A sale for arrears of revenue, if for arrears which have accrued while the land has been subject to an order issued by the Collector under the Cess Act (Bengal Act IX of 1880), for the levy of road cess in arrear, is contrary to s. 17 of Act XI of 1859, such an order being an attachment within the meaning of that section. But under s. 33 of that Act, in every case where a sale for arrears of revenue is impeached, as being contrary to the provisions of Act XI of 1859, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under s. 25. The above provision in s. 33 applies where the sale has been irregularly conducted, and also where the sale has been illegal in consequence of an express provision for exemption of the land from sale for arrears having been contravened

SALE FOR ARREARS OF REVENUE —*continued.*

(4) SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Lala Gauri Sanker Lal v. *Janki Pershad*, I. L. R. 17 Calc. 809; L. R. 17 I. A. 57, referred to GOBIND LAL ROY *v.* RAMJANAM MISSER.

[21 Calc. 70
[L. R. 20 I. A. 165

12.—*Sunset law—Bengal Act VII of 1868, s. 11—Revenue Sale Law (Act XI of 1859), s. 6.*] Section 11 of Bengal Act VII of 1868 makes the sunset law as enacted in s. 6 of Act XI of 1859 applicable, to sales of tenures under the former Act. The refusal therefore of the Collector to accept payment of the amount due when tendered after sunset on the latest day for payment does not make the sale under Bengal Act VII of 1868 illegal. AZIMUDDIN PATWARI *v.* SECRETARY OF STATE FOR INDIA.

[21 Calc. 360

13.—*Act XI of 1859, ss. 6, 13, 14 and 33—Proceedings when share of estate is not sold at auction-sale—Payment of arrears before sale without obtaining exemption from sale—Ground for annulling sale not declared and specified in appeal to Commissioner.*] The plaintiffs and defendants were sharers in a certain estate, the plaintiffs being owners of a joint share, and the defendants the owners of other shares, in respect of which separate accounts had been opened in the Collector's register. The plaintiffs in March, 1890, made default in the payment of Government revenue for their share, and it was advertised to be put up for sale on the 18th September, 1890, under ss. 6 and 13 of Act XI of 1859, for recovery of the amount due, Rs. 18-6. On the 16th September, the plaintiff paid into the treasury of the Collectorate the amount of arrears due, and made an application that the joint share might be exempted from sale; receipts were given for the amount paid in, but no order was made on the application, and the share was not exempted from sale. On the 16th September, the joint share was put up for sale, but there being no bids, the sale was postponed, and on the same day the Collector made an order under s. 14 of Act XI of 1859 that unless the arrears were paid by the other sharers (the defendants) within ten days, the whole estate would be ut pup for sale. Notices of this order, provided for by a rule made under the Act by the Board of Revenue, were given to the serving peon on the 2nd October for service on the defendants, and the arrears were paid in by some of the defendants on the 4th and by others on the 7th October, and, eventually the Collector, acting under s. 14 of the Act, granted on the 5th December, 1890, a certificate of purchase, and gave delivery of possession to the defendants. The plaintiffs appealed to the Commissioner, but their appeal was rejected on the 10th March, 1891. In a suit for a declaration that the proceedings taken by the Collector under s. 14 of the Act were illegal and conveyed no title to the defendants,

SALE FOR ARREARS OF REVENUE —*concluded.*

(4) SETTING ASIDE SALE—*concluded.*

(*b*) OTHER GROUNDS—*concluded.*

and for possession of the joint share with mesne profits:—*Held* by PETHERAM, C. J., and BEVERLEY, J. (AMEER ALI, J., dissenting), that the Collector not having exempted the share from sale, the payment by the plaintiff of the arrears on the 16th September was no bar to the proceedings taken under s. 14 of the Act:—*Held*, also, that the defendants' purchase was not made invalid by the fact of their not having paid in the arrears within ten days from the 18th September, the day fixed for the sale; the ten days in s. 14 run from the time when notice of the Collector's order is given to the other sharers, and not from the date of the sale:—*Held*, further, that it was not open to the plaintiffs to take this latter objection, as it was not declared and specified in their grounds of appeal to the Commissioner in accordance with s. 33 of the Act. *Gobind Lal Roy* v. *Ramjanam Misser*, I. L. R. 21 Calc. 70, followed. *Per* AMEER ALI, J., *contra*. *Per* PETHERAM, C. J.—Section 33 applies to sales under s. 14 as well as to sales by public auction under the Act. *Semble:* There is nothing in Act XI of 1859 which would have prevented the plaintiffs from purchasing the share themselves when it was put up for sale on the 18th September. *Per* BEVERLEY, J.—Under s. 6 of the Act, the sale, if it had taken place on the 18th September, would have conveyed a good title to the defendants; and under s. 14 they are expressly declared to have "the same rights as if the share had been purchased by them at the sale." *Per* AMEER ALI, J.—The proceedings provided for by s. 14 do not apply in a case where there have been no bids at the sale. Section 33 is not applicable to a transfer by the Collector of the defaulting share under s. 14; the sale contemplated by s. 33 and referred to by the Privy Council in *Gobind Lal Roy* v. *Ramjanam Misser*, I. L. R. 21 Calc. 70, is a public sale held at a place prescribed by the proper authorities at which there are bidders and a possibility of competition. GOSSAIN CHUTTURBHOOJ DUT *v.* ISHRI MOL.

[21 Calc. 844

SALE FOR ARREARS OF ROAD CESS.

See BENGAL CESS ACT, S. 47.

[24 Calc. 27

See BENGAL TENANCY ACT, S. 65.

[21 Calc. 722

See LIMITATION ACT, ART. 12.

[23 Calc. 775
[L. R. 23 I. A. 45

See PUBLIC DEMANDS RECOVERY ACT, S. 2.

[23 Calc. 641

See PUBLIC DEMANDS RECOVERY ACT, S. 7.

[23 Calc. 775
[L. R. 23 I. A. 45

SALE IN EXECUTION OF DECREE.

		Col.
1.	Mortgaged Property	... 1152
2.	Resale	... 1154
3.	Purchasers, Title of	... 1155
4.	Distribution of Sale-Proceeds	... 1155
5.	Invalid Sales	... 1159
	(*a*) Death of Judgment-Debtor before Sale	... 1159
	(*b*) Decree Satisfied before Sale	... 1162
	(*c*) Execution against Property not Covered by Decree	... 1162
	(*d*) Fraud	... 1163
	(*e*) Want of Jurisdiction	... 1163
	(*f*) Sale pending Appeal	... 1166
6.	Setting aside Sale	... 1167
	(*a*) General Cases	... 1167
	(*b*) Irregularity	... 1168
	(*c*) Rights of Purchasers	... 1172

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.

[23 Calc. 805

See BENGAL CESS ACT, S. 47.

[24 Calc. 27

See CLAIM TO ATTACHED PROPERTY.

[18 Bom. 98

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[20 Bom. 290
[22 Calc. 909
[L. R. 22 I. A. 129

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[21 Calc. 940
[22 Calc. 767
[18 Mad. 477
[19 Bom. 80
[20 Bom. 565

See HINDU LAW — ADOPTION — EFFECT OF ADOPTION.

[22 Calc. 565

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS.

See HINDU LAW — WIDOW — DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

[17 Mad. 208
[22 Calc. 974

See INSOLVENCY — INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[21 Bom. 681

See LIMITATION ACT, ART. 12.

[20 Mad. 118
[19 All. 308

See LIS PENDENS.

[L. R. 24 I. A. 170
[25 Calc. 179

SALE IN EXECUTION OF DECREE *—continued.*

See REPRESENTATIVE OF DECEASED PERSON.

[21 Bom. 539

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[18 Bom. 522

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS.

[18 All. 325

See RIGHT OF SUIT—FRAUD.

[21 Calc. 605
[24 Calc. 546

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[19 Bom. 216

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[21 Calc. 799

See TRANSFER OF PROPERTY ACT, S. 99.

[16 All. 415
[21 Calc. 34

——, Petition to set aside.

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

[17 Mad. 304

——, Purchase at.

See LIMITATION ACT, ART. 138.

[17 Mad. 89
[18 Mad. 144

——, Purchaser at.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[18 Mad. 439
[18 All. 36

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITY IN ATTACHMENT.

[18 Mad. 437
[19 Bom. 121
[18 All. 469

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE.

[18 Bom. 315

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[19 Bom. 528

——, Suit to confirm.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

[18 All. 437

SALE IN EXECUTION OF DECREE *—continued.*

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[19 Bom. 216

——, Suit to set aside.

See EXECUTION OF DECREE—EFFECT OF CHANGE IN LAW PENDING EXECUTION.

[22 Calc. 767
[18 Mad. 477

See INSOLVENT ACT, S. 7.

[20 Mad. 452

See LIMITATION ACT, ART. 12.

[18 Mad. 478

See RES JUDICATA — RELIEF NOT GRANTED.

[24 Calc. 546

See RIGHT OF SUIT—FRAUD.

[21 Calc. 605, 612
[24 Calc. 546

See TRANSFER OF PROPERTY ACT, S. 99.

[19 Mad. 382

——, Want of sanction of Government for.

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[19 Bom. 80
[20 Bom. 565

(1) MORTGAGED PROPERTY.

1.—*Proclamation of sale—Mortgages noted in proclamation of sale—Civil Procedure Code* (1882), *ss.* 282—287.] Claims admitted by parties or established by the decree of a Court should be entered in the proclamation of sale as charges upon the property, though they have come to the knowledge of the Court in an inquiry under s. 287 only, and have not been made the subject of an order under s. 287 of the Civil Procedure Code. SHANTAPPA CHEDAMBARAYA *v.* SUBRAO RAMCHANDRA YELLAPUR.

[18 Bom. 175

2.—*Rights of purchasers under mortgage-decree —Purchases in execution by decree-holders—Title of purchaser holding a decree on a mortgage which had preceded his opponent's decree.*] The plaintiffs and defendants, either party holding a separate decree against the same estate, had by leave purchased in execution. Both parties claimed the proprietary right and possession, the defendants holding the latter. The first of the decrees in date was the plaintiffs' for money against the representatives of the deceased owner of the property, which before then had been mortgaged to the defendants by his widow. The plaintiffs obtained only the equity of redemption, their purchase having been of the right, title, and interest. The mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution, and defended

SALE IN EXECUTION OF DECREE —*continued.*

(1) MORTGAGED PROPERTY—*continued.*

the possession which they obtained:—*Held*, that the defendants, in whose favour the decree had been made upon a *bonâ fide* mortgage, without notice that the mortgagor had been only holding *benami* for her husband, had the better title; that the High Court had rightly disallowed an objection taken by the plaintiffs, that this defence, as distinguished from the defendants' answer that the widow was the real owner, had not been set up or decided in the Court of first instance. MAHOMED MOZUFFER HOSSEIN *v.* KISHORI MOHUN ROY.

[22 Calc. 909
[L. R. 22 I. A. 129

3.—*Purchase of equity of redemption by decree-holder under s.* 294 *of the Code of Civil Procedure —Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.*] *A* mortgaged certain land to *B*, but remained in possession thereof. Subsequently *A* sold a portion of the said land to *C* in consideration of her paying off the mortgage-debt due to *B*. *C* entered into possession, but was unable to satisfy the debt. *C* died, and *A* sued *C's* daughter and legal representative, for damages sustained by him from the non-payment of the purchase-money by *C*. *A* obtained a decree and, the money not being paid as therein decreed, applied for execution, and brought to sale the equity of redemption vested in *C* by virtue of the sale. By leave of the Court, *A* bid at the Court-sale and bought the right of redemption and recovered back possession of the land sold to *C*. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court-sale for the equity of redemption. The defendant contended that *A* was bound to give credit for the full value of the land under mortgage:—*Held*, that having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, *A's* position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his equity of redemption, is the cash payment for the equity of redemption *plus* the debt, *i.e.*, the amount undertaken to be paid to the mortgagee, and that for these amounts *A* was bound to give credit. KRISHNASAMI AYYAR *v.* JANAKIAMMAL.

[18 Mad. 153

4.—*Application for re-sale in execution of decree —Judgment-debtor purchasing benami—Rights of mortgagee.*] Upon an application made on the 28th August, 1891, for execution of a mortgage-decree, the mortgaged property was sold, and the judgment-debtors purchased it *benami* at a low price. Thereupon the decree-holders made an application on the 12th November, 1891, asking the Court to set aside the *benami* purchase and

SALE IN EXECUTION OF DECREE —*continued.*

(1) MORTGAGED PROPERTY—*concluded.*

re-sell the property. The first Court found that the purchase was not *benami*, and confirmed the sale on the 12th April, 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July, 1892. The High Court in second appeal, accepted the finding of the Appellate Court as regards the purchase being *benami*, but upheld the sale with the remark that the said property and any other property of the debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August, 1893. On an application for execution made on the 3rd December, 1894, objections were raised on the ground that the property was not liable to be sold again in execution of this decree:—*Held*, that the previous sale under the mortgage-decree was no bar to a fresh sale under the same decree. *Ram Autar Singh* v. *Tulsi Ram*, 5 C. L. R. 227; *Otter* v. *Lord Vaux*, 2 K. & J. 650; and 6 DeG. M. & G. 638; and *Lutf Ali Khan* v. *Futteh Bahadur*, I. L. R. 17 Calc. 32, referred to. RAGHUNATH SAHAY SINGH *v.* LALJI SINGH.

[23 Calc. 397

5.—*Transfer of Property Act* (*IV of* 1882), *s.* 88 *—Suit for sale on a mortgage—Purchase at auction-sale by decree-holder — Further execution sought against other property comprised in the mortgage—Amount for which decree-holder must give credit to mortgagee.*] A mortgagee decree-holder in a suit for sale under s. 88 of the Transfer of Property Act, 1882, brought part of the mortgaged property to sale, and, with the leave of the Court, purchased it himself. The amount realised by the sale being insufficient to satisfy the mortgage-debt, the decree-holder applied for execution against the remainder of the property comprised in the mortgage:—*Held*, that the decree-holder was not bound to give credit to the mortgagor to the amount of the market value of the mortgaged property purchased by him, but only to the amount of the actual purchase-money. *Mahabir Parshad Singh* v. *Macnaghten*, I. L. R. 16 Calc. 682; *Sheonath Doss* v. *Janki Proshad Singh*, I. L. R. 16 Calc. 132; and *Ganga Pershad* v. *Jawahir Singh*, I. L. R. 19 Calc. 4, referred to. MUHAMMAD HUSEN ALI KHAN *v.* DHARAM SINGH.

[18 All. 31

6.—*Transfer of Property Act* (*IV of* 1882), *ss.* 92 *and* 63*—Decree for sale on a mortgage—Order absolute for sale—Civil Procedure Code* (1882), *ss.* 291 *and* 310*A.*] Sections 291 and 310A of the Code of Civil Procedure, 1882, will apply to a sale held in virtue of an order absolute for sale passed under s. 89 of the Transfer of Property Act, 1882, although no power is given under that Act to postpone the operation of an order under s. 89. RAJA RAM SINGHJI *v.* CHUNNI LAL.

[19 All. 205

(2) RE-SALE.

7.—*Civil Procedure Code, s.* 293—*Order for recovery of deficiency on re-sale—Right of suit to set aside order—Certificate of amount of deficiency.*]

SALE IN EXECUTION OF DECREE —*continued.*

(2) RE-SALE—*concluded.*

Held, that a suit will lie to set aside an order passed under s. 293 of the Code of Civil Procedure:—*Held*, also, that the fact that the certificate provided for by s. 293 of the Code has not been granted will not prevent the decree-holder or the judgment-debtor, as the case may be, from recovering from the defaulter the deficiency arising on a re-sale of property sold in execution of a decree but not paid for. TAPESRI LAL *v.* DEOKI NANDAN RAI.

[19 All. 22

(3) PURCHASERS, TITLE OF.

8.—*Civil Procedure Code* (1882), *s.* 316—*Title of auction-purchaser who has not obtained a certificate of sale.*] Although the auction-purchaser at a sale held in execution of a decree may not obtain a full title until a certificate has been granted, this must not be considered as necessarily destroying any lesser interest which arises by reason of general equitable principles. *Dagdu* v. *Pancham Singh Gangaram*, I. L. R. 17 Bom. 375; and *Het Ram* v. *Baldeo*, Weekly Notes, All. (1894) 54, approved. CHIDDO *v.* PIARI LAL.

[19 All. 188

(4) DISTRIBUTION OF SALE-PROCEEDS.

9.—*Civil Procedure Code* (1882), *ss.* 285 *and* 295—*Attachment by Small Cause Court—Transfer of decree to superior Court.*] Practice of the Calcutta High Court in favour of the principle of rateable distribution amongst all the attaching creditors, without any such condition as the transfer of the execution proceedings to the superior Court, adopted and held supported by the cases of *Gopee Nath Acharjee* v. *Achcha Bibee*, I. L. R. 7 Calc. 553; *Bykant Nath Shaha* v. *Rajendro Narain Rai*, I. L. R. 12 Calc. 333; and *Bhugwan Dass Bogla* v. *Bunko Behary Bajpie*, suit 130 of 1884, unreported. *Muttalagiri Nayak* v. *Muttayyar*, I. L. R. 6 Mad. 357; and *Nimbaji Tulsiram* v. *Vadia Venkati*, I. L. R. 16 Bom. 683, not followed. CLARK *v.* ALEXANDER.

[21 Calc. 200

10.—*Civil Procedure Code* (1882), *s.* 295—*Realisation of proceeds of sale—Sale under agreement sanctioned by Court—Sale not of the right or interest of judgment-debtor in property.*] *P*, the plaintiff in a suit No. 369 of 1886, obtained a decree for Rs. 2,14,728, in execution of which certain immoveable property was attached, including the premises 22 Strand Road, which was subject to certain trusts created by a deed, dated the 2nd February, 1858, executed by the father of the judgment-debtors, who with one *M* were trustees of the deed. At the time of the attachment a suit No. 448 of 1883 was pending, in which the judgment-debtors as plaintiffs sought to have it declared what were the valid trusts under the deed, and that, subject to such trusts, they were absolutely entitled to the premises 22 Strand Road, and the other properties; in that suit, on the 26th March, 1888, a decree was made declaring the

SALE IN EXECUTION OF DECREE —*continued.*

(4) DISTRIBUTION OF SALE-PROCEEDS —*continued.*

valid trusts and charging the premises 22 Strand Road with the payment of certain specific sums. In 1891, the judgment-debtors brought a suit No. 441 of 1891 to have the premises 22 Strand Road sold freed from the trusts, to provide for the trusts by setting apart a sufficient sum out of the purchase-money, and to have the balance divided between the judgment-debtors; and, by the decree in that suit, dated the 2nd September, 1892, the trustees of the deed were authorised to sell the premises 22 Strand Road, and were directed out of the proceeds of sale to set aside Rs. 45,000 to provide for the trusts, next to pay the costs therein directed, and then to apply the balance for the purposes in the plaint mentioned. In pursuance of this authority, the trustees on the 25th February, 1893, entered into an agreement with one *J L* for sale to him of the premises 22 Strand Road for Rs. 1,43,000. On the 8th August, 1893, a notice was issued at the instance of *P*, calling on the judgment-debtors to show cause why the premises 22 Strand Road should not be sold in execution under her attachment. On the 29th August, 1893, the trustees of the deed of 2nd February, 1858, gave notice to *P* of an application to be made in the suits Nos. 369 of 1886 and 441 of 1891 for the removal of her attachment, or in the alternative for an order that the agreement for sale entered into by the trustees with *J L* be carried out; that the proceeds of sale be applied to certain purposes specified in the notice, as having priority over the claim of *P*; that the balance be paid to the credit of suit No. 369, "as subject to the said attachment," and that the premises 22 Strand Road be thereupon released from attachment. These applications were heard together, and on the 14th September, 1893, a consent order was made, by which it was ordered that the trustees be at liberty to carry out the agreement for sale with *J L*; that the sale-proceeds be paid to *W*, a member of the firm of the attorneys for *P*, who out of such proceeds was to pay Rs. 45,000 to the trustees, and make other payments directed by the order, and pay the balance into Court to the credit of suits Nos 369 of 1886 and 441 of 1891, "the said *P* retaining her lien under her attachment upon the said balance in the same way as the same then subsisted upon the said property." The property was sold by the trustees in accordance with this order, and the purchase-money was paid to *W*, who after making the payments directed paid the balance into Court. Whilst in the hands of *W*, the balance was attached by other creditors who had obtained decrees against the judgment-debtors, and it was paid into Court with notice of these attachments:—*Held*, on an application by *P* to have the money paid out to her in part satisfaction of her decree, that it could not be treated as "assets realised by sale or otherwise in execution of a decree" within the meaning of s. 295 of the Code of Civil Procedure. The sale of the property under the order of the 14th September,

SALE IN EXECUTION OF DECREE —*continued.*

(4) DISTRIBUTION OF SALE-PROCEEDS —*continued.*

1893, was not a sale in execution, but a sale in pursuance of a private agreement entered into by the trustees under a liberty reserved to them by the Court, and the fact that the Court sanctioned it made no difference in this respect. It did not purport to be a sale of any right, title or interest of the judgment-debtors or of any property belonging to them. To constitute a "realisation within the meaning of s. 295, there must be either a realisation by a sale in execution under the process of the Court, or a realisation in one of the other modes expressly prescribed by the sections of the Code. If the money paid into Court had exceeded the amount due to *P* in respect of her lien the amount of such excess might perhaps have been treated as a "realisation in execution" within the meaning of s. 295, but the balance in *W*'s hands was less than the amount due to *P*, and was entirely absorbed by the lien in her favour. There was therefore no surplus on which the attachments could operate. *Purshotam Dass* v. *Mahanant Surajbharthi*, I. L. R. 6 Bom. 588; and *Sewbux Bogla* v. *Shib Chunder Sen*, I. L. R. 13 Calc. 225, referred to and approved. PROSONNOMOYI DASSI *v.* SREENAUTH ROY.

[21 Calc. 809

11.—*Civil Procedure Code* (1882), *s.* 295—*Rateable distribution of assets realised in execution.*] *R* obtained a decree against *A* and another in the High Court under its original civil jurisdiction. In execution of that decree *A's* property was attached by the second class Subordinate Judge of Bijapur, and an order for sale was made. *D* obtained a decree against *A* alone in the Court of the first class Subordinate Judge of Sholapur, and obtained from that Court an order for the attachment and sale of *A's* property which was already attached by the second class Subordinate Judge of Bijapur. He then applied to the second class Subordinate Judge of Bijapur for rateable distribution of the assets realised under s. 295 of the Civil Procedure Code (Act XIV of 1882). The second class Subordinate Judge of Bijapur rejected the application, and he thereupon applied to the High Court:—*Held*, following *Jetha* v. *Najeeralli* I. L. R. 4 Bom. 472; and *Krishnashankar* v. *Chandrashankar*, I. L. R. 5 Bom. 198, that *D* was not entitled to share in the assets. DATTATRAYA *v.* RAHIMTULLA NURMAHOMED KHOJA.

[18 Bom. 456

12.—*Civil Procedure Code* (1882), *s.* 295—*Property attached in execution of decrees of Small Cause Court and High Court — Execution-proceedings in Small Cause Court transferred to High Court—Rateable distribution of assets realised in execution.*] The plaintiffs obtained a decree in the High Court against the defendant, and in execution attached goods in the defendant's shop. These goods, however, were already under attachment in execution of certain decrees obtained in the Small Causes Court against the defendant. On the 4th September, 1895, by an order of the High Court made on the application of the plaintiffs the execution proceedings in the Small Cause Court suits were transferred to the High Court, and it was ordered that the attached property should be realised by the High Court. The records of the execution proceedings in those suits were lodged in the Prothonotary's office. On the 26th September, 1895, the decree-holder in one of the Small Cause Court suits obtained an order from the Judge in chambers directing the Sheriff to take charge of the attached property and realise it by sale. The Sheriff accordingly sold the property and certified the sale to the Prothonotary's office. The plaintiffs subsequently (under the rules of the Sheriff's office) applied to the Prothonotary for payment to them of the amount realised or so much thereof as should satisfy their decree. The plaintiffs were directed to give notice of their application to the holders of the Small Cause Court decrees:—*Held*, that the holders of the Small Cause Court decrees were entitled to share rateably with the plaintiffs in the High Court suit in the proceeds of the property sold in execution by the Sheriff. JAYNARHYAN MEGHRAJ *v.* ISMAIL KARAMALI.

[20 Bom. 377

13.—*Civil Procedure Code* (1882), *s.* 295—*Rateable distribution—Assets realised in execution.*] *A* *B* and *C* held money-decrees against the same judgment-debtor. *A* attached by a prohibitory order dated in December funds of the judgment-debtor in the hands of *D*. In January, *B* attached in execution the same funds. In February, they were paid into Court, and subsequently on the same day *C* attached them as money due in the custody of the Court:—*Held*, that the funds should be rateably distributed between *A* and *B*, and that *S* was not entitled to participate therein. SRINIVASA AYYANGAR *v.* SEETHARAMAYYAR.

[19 Mad. 72

14.—*Civil Procedure Code* (1882), *s.* 295—*Rateable distribution—Decree for money—Mortgage decree.*] The plaintiff and defendant, respectively, held successive mortgages on the same land. The defendant obtained a decree on his mortgage against the land and in respect of any unrealised balance against the mortgagor, two months' time for redemption being given. The plaintiff then obtained a like decree. The defendant abandoned his claim on the mortgage premises and attached other property of the mortgagor. The plaintiff applied to execute his decree against the mortgage premises and the other property; but with regard to the latter his application was rejected. The defendant having brought to sale the property attached, the plaintiff applied, under the Civil Procedure Code, s. 295, for rateable distribution which was refused. The plaintiff then brought to sale the mortgage premises, which did not realise the amount of the debt, and he now sued to recover the sum which would have been payable to him

SALE IN EXECUTION OF DECREE —*continued.*

(4) DISTRIBUTION OF SALE-PROCEEDS —*concluded.*

under s. 295:—*Held*, that the plaintiff's decree was a "decree for money" within the meaning of s. 295, and that he was entitled to recover the sum claimed: *Per curiam:* The property ought not to have been sold and the money paid to the defendant until the mortgaged property had been sold and had been found insufficient to pay his debt. KOMMACHI KATHER *v.* PAKKER.

[20 Mad. 107

15.—*Proceeds of sale how applicable—Priority of holder of unregistered mortgage to holder of money-decree—Civil Procedure Code, s.* 295—*Transfer of Property Act (IV of* 1882), *s.* 97.] The plaintiff held a mortgage of certain land belonging to the first defendant. The mortgage was not registered. The second defendant *M* was a mortgagee of the same land under a mortgage which was subsequent in date but was duly registered. *M* obtained a decree upon this latter mortgage and applied in execution for sale of the land. The plaintiff intervened, but his claim was rejected on the ground that *M's* mortgage was registered and had priority to his mortgage, which was not registered. The land was sold by auction to *R* (defendant No. 4), and the proceeds of the sale were partly applied in satisfaction of *M's* claim, and a further sum of Rs. 164 was paid to one *S* (defendant No. 3), who had obtained a money decree against the mortgagor (defendant No. 1). A balance of Rs. 103-8-11 was paid into Court, and subsequently returned to defendant No. 1 (the mortgagor). The plaintiff now sued for payment of his mortgage-debt out of the proceeds of sale or from the defendants. The lower Court held that *S* could not be called upon to refund the money which had been paid to him out of the proceeds, and that the plaintiff had a cause of action only against the mortgagor (defendant No. 1) not merely for the balance of Rs. 103-8-11, but for the whole of his claim. On appeal to the High Court, *held*, that the claim of the plaintiff in virtue of his mortgage although unregistered was prior to that of *S* under his money-decree. The plaintiff's earlier mortgage was postponed to that of *M*, because it was not registered, but the plaintiff had the right of a second mortgagee over the balance in virtue of his mortgage. The proceeds of the sale after satisfying the first incumbrancer (*M*) became payable first to the other incumbrancers, if any, and then to the mortgagor (defendant No. 1). *S* could only take any balance that remained subject to the equitable right of the plaintiff. PADMANABH BOMBSHENVI *v.* KHEMU KOMAR NAIK.

[18 Bom. 684

(5) INVALID SALES.

(*a*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

16.—*Sale without legal representative of judgment-debtor being made a party—Effect of such omission on validity of sale—Civil Procedure Code*

SALE IN EXECUTION OF DECREE —*continued.*

(5) INVALID SALES—*continued.*

(*a*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE —*continued.*

(1882), *ss.* 311 *and* 316—*Right of redemption—Absence of substantial injury.*] *T* obtained a decree against one *S* and in execution attached certain land which *S* had previously mortgaged to *K*. On the 11th June, 1877, a warrant for sale was issued followed by the usual proclamation. *S* died on the 27th September, 1877, and a few days afterwards, *viz.*, on the 3rd October, 1877, the sale took place without any notice being given to *D* who was the heir and legal representative of *S*, who, however, came to know of it shortly after. *T*, the decree-holder, purchased the land at the sale, and in 1883 sold it to *A*, who redeemed the mortgage from *K*, and took possession. In 1889 *D*, as heir and legal representative of *S*, brought this suit claiming to redeem the mortgage. She made *K* (original mortgagee) and *A* (the purchaser) parties to the suit. She contended that the sale in execution was bad, having taken place after the death of the judgment-debtor and without his legal representative having been placed on the record:—*Held*, that the plaintiff was not entitled to redeem:—*Per* JARDINE, J.—As no "substantial injury" was alleged to have resulted by reason of the plaintiff not having been brought on the record of the execution proceedings immediately on the death of the judgment-debtor and before the sale took place, the purchaser acquired a valid title under s. 316 of the Code of Civil Procedure. *Per* RANADE, J.—The omission to join the name of the representative of the deceased judgment-debtor as a party to the record was a material irregularity and a serious defect in the title of the auction-purchaser. But this irregularity did not vitiate the sale under the special circumstances of the present case, *viz.*, that the plaintiff had taken no step to set aside the sale although she came to know of the sale within a few days after it took place; that there was no fraud or *mala fides* on the part of the judgment-creditor; that the sale had not resulted in any substantial injury to the plaintiff; and that the auction-purchaser and his assignee had been in adverse possession for more than twelve years. ABA BIN KHESAJI *v.* DHONDU BAI.

[19 Bom. 276

17.—*Civil Procedure Code* (1882), *s.* 311—*Irregularity—Omission to bring in representatives of deceased judgment-debtor—Absence of a guardian "ad litem" for minor—Adult judgment-debtor described as minor.*] In a mortgage decree *M* was one of the judgment-debtors, and the guardian *ad litem* of two of the other judgment-debtors, *viz.*, *J*, her minor daughter, and *K*, another person, wrongly described as a minor. After the decree was made absolute proceedings were taken in execution, but upon payment of a part of the decretal amount the sale was stayed. *M* then died, and, although her heirs were some of the other judgment-debtors, no one was brought on the record as her representative, and no one appointed guar-

SALE IN EXECUTION OF DECREE —*continued.*

(5) INVALID SALES—*continued.*

(a) DEATH OF JUDGMENT-DEBTOR BEFORE SALE —*continued.*

dian *ad litem* either for *J* or *K*. Upon a fresh application for sale in which the parties were described as in the decree, the sale was held. An application under s. 311 of the Civil Procedure Code (1882), was then made on behalf of *J* and *K* to set aside the sale:—*Held*, that the omission to bring in the representatives of the deceased judgment-debtor did not vitiate the sale. *Sheo Prasad* v. *Hira Lal*, I. L. R. 12 All. 440; *Aba* v. *Dhondu Rai*, I. L. R. 19 Bom. 276, referred to. *Krishnayya* v. *Unnessa Begum*, I. L. R. 15 Mad. 399, not followed. *Romeshurry Dasi* v. *DurgaDass Chatterjee*, 7 C. L. R. 85, distinguished:—*Held*, also, that neither the absence of a *guardian ad litem* for *J*, nor the description of *K* as a minor, affected the validity of the proceedings. *Taqui Jan* v. *Obaidulla*, I. L. R. 21 Calc. 866, referred to. NET LALL SAHOO *v.* KAREEM BUX.

[23 Calc. 686

18.—*Death of judgment-debtor after decree but before execution—Legal representatives not made parties to proceedings—Sale in execution without notice to legal representatives under s. 248 of Civil Procedure Code—Notice given to wrong persons—Title of purchaser—Right of redemption —Limitation—Civil Procedure Code* (1877), *ss.* 234, 248 *and* 311.] On the 28th March, 1877, *N* mortgaged certain property to the defendant. On the 27th June, 1877, one *H* obtained a money-decree against *N*, but before it could be executed, *N* died leaving all his property to his daughters, the plaintiffs. On the 22nd November, 1878, *H* applied for execution against *N*, deceased, by his heir and nephew *R*. *R* appeared and stated that he was not the heir, but that the heirs of *N* were his daughters, the plaintiffs. The plaintiffs, however, were not made parties to the execution proceedings, nor were notices served on them under s. 248 of the Civil Procedure Code (Act X of 1877). The execution-proceedings were continued, and the mortgaged property was sold on the 9th June, 1880, and was bought by the defendant (the mortgagee) subject to his mortgage. The sale was confirmed, and a certificate of sale was duly issued to the defendant, who got formal possession on the 11th October, 1880, he being already in possession as mortgagee. In 1889 the plaintiffs sued the defendant to redeem the mortgage. It was contended that the defendant having purchased at a Court-sale was entitled to the property free from the claim of the plaintiffs. The case first came before FARRAN, C. J., and PARSONS, J., who differed in opinion, FARRAN, C. J., holding that the sale-proceedings were not absolutely null and void by reason of the want of notice of execution to the representatives, but they were valid until set aside by a suit brought for that purpose, which suit had never been brought, and that the plaintiffs had therefore lost their right to redeem, and PARSONS, J., being of opinion that the sale was null and void, and therefore that the plaintiffs were entitled to succeed. The case was then referred to three other Judges of the Court:—*Held*, by CANDY and JARDINE, JJ., that even assuming that the execution proceedings and sale had conveyed an absolute title to the purchaser, the present suit, which was brought within twelve years of the sale, did in effect challenge the sale, and that the plaintiffs were therefore entitled to redeem:—*Held*, by RANADE, J., that in respect of the plaintiffs, who were not parties, the sale-proceedings were invalid and null, and without jurisdiction; that the auction-purchaser acquired no rights under his certificate of sale as against these legal representatives, and that as against them he could only claim title by adverse possession not falling short of twelve years. As the present suit was admittedly brought within that period it was maintainable. ERAVA *v.* SIDRAMAPPA PASARE.

[21 Bom. 424

(b) DECREE SATISFIED BEFORE SALE.

19.—*Order for sale and sale in execution under a decree previously satisfied.*] An order for sale and a sale under such order are *ultra vires* and nullities if the decree which is ordered to be executed has been satisfied by payment into Court of the decretal money before the order is made. CHUNNI *v.* LALA RAM.

[16 All. 5

20.—*Sale in execution of decree already satisfied —Bonâ fide purchaser at such sale—Right of such purchaser.*] Where a person, a stranger to the proceedings, purchases property *bonâ fide* at an auction-sale held in execution of a decree, the sale to him cannot be set aside on the ground that the decree had already been satisfied out of the Court at the time the sale was held. *Rewa Mahton* v. *Ram Kishen*, I. L. R. 14 Calc. 18; L. R. 13 I. A. 106; and *Mothura Mohun Ghose* v. *Akhoy Kumar Mitter*, I. L. R. 15 Calc. 557, followed. YELLAPPA *v.* RAMCHANDRA.

[21 Bom. 463

(c) EXECUTION AGAINST PROPERTY NOT COVERED BY DECREE.

21.—*Sale of property of person not party to execution-proceedings—Joint decree executed against separate property—Decree against karnavan on tarwad debt before partition—Execution against one of the sharers after partition.*] The *karnavan* of a Malabar *tarwad* borrowed money for purposes which rendered the debt binding on the *tarwad*. The creditor obtained a decree against the *karnavan* in 1879. In 1882 a partition of the *tarwad* property took place. In 1891 property which had fallen on partition to the present plaintiff's share was attached and brought to sale in execution of the decree of 1879. He was not joined as a party in the execution-proceedings:—

SALE IN EXECUTION OF DECREE *continued.*

(5) INVALID SALES—*continued.*

(*e*) EXECUTION AGAINST PROPERTY NOT COVERED BY DECREE—*concluded.*

Held, in a suit to set aside the sale in execution of the decree, as invalid, that the sale did not bind the plaintiff. *Sankara* v. *Kelu*, I. L. R. 14 Mad. 29, referred to. KUNHAPPA NAMBIAR *v.* SHRIDEVI KETTILAMMA.

[18 Mad. 451

22.—*Decree against karnavan of tarwad on tarwad debt before partition—Execution against one of the sharers after partition—Joint decree executed against separate property.*] In a suit for declaration that certain land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the decree was passed against the judgment-debtor as *karnavan* of a Malabar *tarwad*, and that it was for a debt incurred for purposes binding on the *tarwad*. In 1882 a partition deed had been come to between the members of the *tarwad* under which the property in suit had been allotted to the plaintiff:—*Held*, that the state of things when the debt was contacted must be looked to, and at that time the *karnavan* was competent to bind all the members of the *tarwad*. Any subsequent arrangement in the family could not affect their obligation to the creditor who was not a party to it. The plaintiff's property therefore was liable notwithstanding the partition. KRISHNAN NAMBIAR *v.* KRISHNAN NAIR.

[18 Mad. 452 note.

(*d*) FRAUD.

23.—*Civil Procedure Code* (1882), *s.* 311—*Ground for setting aside sale or otherwise—Effect of fraud to which auction-purchaser is no party.*] A judgment-debtor cannot have a Court-sale set aside on the ground of fraud in the absence of proof that the auction-purchaser was a party to the fraud, and that the fraud came to the judgment-debtor's knowledge subsequent to the confirmation of the sale. ABBUBAKER SAHEB *v.* MOHIDIN SAHEB.

[20 Mad. 10

(*e*) WANT OF JURISDICTION.

24.—*Civil Procedure Code* (1882), *ss.* 285 *and* 295—*Concurrent decrees — Distribution of assets among several decree-holders—Sale in execution by inferior Court of property while under an attachment issued by superior Court.*] On the 9th October, 1891, *A* obtained a decree against *B* in the Court of the first class Subordinate Judge of Surat. On the 13th October, 1891, *C* also obtained a decree against *B* in the Court of the second class Subordinate Judge at Surat and immediately, *viz.*, on the 16th October, 1891, applied for execution. *B's* property was consequently attached on the 18th October, 1891. On the 7th July, 1892, an order for sale was made, and the proclamation of sale was issued on the 19th July, 1892. The 17th August was fixed as the date of the auction-sale. On the 23rd July, 1892,

SALE IN EXECUTION OF DECREE *continued.*

(5) INVALID SALES—*continued.*

(*e*) WANT OF JURISDICTION—*continued.*

A applied to the first class Subordinate Judge for execution of his decree of the 9th October, 1891, and *B's* property (with respect to which the proclamation of sale had been already issued by the second class Subordinate Judge) was attached on the 14th August, 1892. Three days later, however, *viz.*, on the 17th August, 1892, the property was sold under the decree of the second class Subordinate Judge. *A* then applied to the second class Subordinate Judge to set aside the sale on the ground that it was invalid under s. 285 of the Civil Procedure Code (Act XIV of 1882), having been made while the attachment levied by the first class Subordinate Judge was pending, and on the second class Subordinate Judge's refusal to do so, *A* applied to the High Court under its extraordinary jurisdiction:—*Held*, that the sale was good. NARANJI MORARJI *v.* HARIDAS NAVALRAM.

[18 Bom. 458

25.—*Civil Procedure Code* (1882), *s.* 385—*Money attached in execution in two Courts—"Court of highest grade"—Munsif's Court—Small Cause Court.*] In the North-Western Provinces the Court of a Munsif must, for the purposes of s. 285 of the Code of Civil Procedure, be regarded as of a higher grade than a Court of Small Causes. So *held* by EDGE, C. J., TYRRELL, BURKITT and AIKMAN, JJ. (KNOX, J., *dissentiente*). *Per* KNOX, J.—The respective functions of a Munsif's Court and of a Court of Small Causes in the North-Western Provinces are such that the Courts do not admit of the comparison implied by the term "grade" being instituted between them for the purposes of s. 285 of the Code of Civil Procedure. BALLU RAM *v.* RAGHUBAR DIAL.

[16 All. 11

26.—*Bengal, N-W. P., and Assam Civil Courts Act (XII of 1887), s. 13, cl. 3—Civil Procedure Code* (1882), *s.* 25—*Transfer of civil case.*] A suit on a mortgage-bond, praying for decree for sale, was transferred under s. 25 of the Civil Procedure Code from the Court of the second Subordinate Judge to that of the third Subordinate Judge in the district for trial in that Court. The suit was decreed, and an order for sale was passed by the third Subordinate Judge. After the sale, an application was made to set it aside on the ground, *inter alia*, that the Court of the third Subordinate Judge had no jurisdiction to sell the property, it being within the local jurisdiction of the second Subordinate Judge's Court. The jurisdiction of the third Subordinate Judge to try the *suit* was not questioned:—*Held*, that s. 13, cl. 3 of the Bengal, North-Western Provinces and Assam Civil Courts Act (XII of 1887) dealt with matters of this description, and the Court which passed the decree and the order for sale had jurisdiction to hold the sale. *Prem Chand Day* v. *Mokhoda Debi*, I. L. R. 17 Calc. 699,

SALE IN EXECUTION OF DECREE —*continued.*

(5) INVALID SALES—*continued.*

(*e*) WANT OF JURIDICTION—*continued.*

distinguished; *Gopi Mohan Roy* v. *Doybaki Nundun Sen*, I. L. R. 19 Calc. 3; and *Tincowrie Debya* v. *Shib Chandra Pal Chowdhury*, I. L. R. 21 Calc. 639, referred to. JAGERNATH SAHAI *v.* DIP RANI KOER.

[22 Calc. 871

TINCOURI DEBYA *v.* SHIB CHANDRA PAL CHOWDHURY.

[21 Calc. 639

27.—*Civil Procedure Code* (1882), *s.* 285—*Attachment of the same property by two Courts of different grades.*] The operation of s. 285 of the Code of Civil Procedure is not affected by the fact that, prior to the attachment made by the Court of higher grade, proceedings subsequent to attachment may have taken place in the Court of lower grade in execution of the decree of that Court. *Badri Prasad* v. *Saran Lal*, I. L. R. 4 All. 359; *Aghore Nath* v. *Shama Sundari*, I. L. R. 5 All. 615; and *Muttakaruppan Chetti* v. *Mathuramalinga Chetti*, I. L. R. 7 Mad. 47, referred to. BALKISHEN *v.* NARAIN DAS.

[18 All. 348

28.—*Attachment and proclamation of sale in execution of decree of Small Cause Court—Subsequent application for execution of decree of first class Subordinate Judge—Civil Procedure Code* (1882), *s.* 285—*Sale by inferior Court of property while under attachment issued by Superior Court.*] *G* obtained a decree against *M* in the Small Cause Court of Surat, and in execution he attached a debt due to *M*, and a proclamation of sale was duly issued. Before the sale took place, however, one *K* applied to the first class Subordinate Judge for execution of a decree which he had obtained against *M* in that Judge's Court, and the same debt was then attached. The proceedings, however, under the Small Cause Court decree were continued, and the debt was sold in execution and was purchased by the applicant:—*Held*, following *Naranji Morarji* v. *Haridas Navalram*, I. L. R. 18 Bom. 458, that the sale by the Small Cause Court was not rendered invalid by the subsequent proceeding in the first class Subordinate Judge's Court. The term "grade" in s. 285 of the Civil Procedure Code (Act XIV of 1882) has the same meaning as it had in s. 5 of the Code (Act VIII of 1859),—that is, it depends upon "the pecuniary or other limitations" of the jurisdiction of the particular Court, and therefore, as s. 285 is applicable to Small Cause Courts, the Small Cause Court is inferior in grade to the Court of the first class Subordinate Judge. TURMUKLAL HARKISANRAI *v.* KALYANDAS KHUSHAL.

[19 Bom. 127

29.—*Decrees of different Courts against same judgment-debtor—Leave given by both Courts to judgment-debtor to raise amount by private sale—Civil Procedure Code* (1882), *s.* 305—*Confirmation of such sale by one Court—Subsequent application for confirmation to other Court.*] *P* obtained a decree against *V* in the Court of the second class Subordinate Judge at Saundatti. He applied (*darkhast* of 1893) for execution, but *V* on the 19th April, 1893, obtained permission, under s. 305 of the Civil Procedure Code (Act XIV of 1882), to raise the amount of the decree by private sale on or before the 6th June, 1893, the day fixed for the sale. She obtained a certificate of leave under s. 305. Another decree was obtained against *V* in the Court of the first class Subordinate Judge at Belgaum by one *R*, and he attached in execution (*darkhast* 351 of 1892) the same lands, which were already attached by the Saundatti Court. From the Belgaum Court, however, *V* also obtained a certificate under s. 305 of the Civil Procedure Code, on 22nd April, 1893, authorising a private sale. Relying on these two certificates *V* sold the lands under attachment to the applicant *A* for Rs. 2,000 by deed dated the 25th May, 1893. On the 28th June, 1893, *A* applied to the first class Subordinate Judge in Belgaum, under s. 305 of the Civil Procedure Code, for confirmation of the sale, and that the purchase-money paid by him should be distributed as follows, *viz.*, Rs. 518-14-2 in satisfaction of the decree of the Belgaum Court, Rs. 128-7-10 in satisfaction of the decree of the Saundatti Court, and the balance, Rs. 1,352-10-0, to be paid to *V*. The Court of Belgaum granted the application, and directed that the above sum of Rs. 128-7-10 should be paid into the Court of Saundatti. On the 17th July, 1893, *A* applied to the Court at Saundatti to confirm the sale already confirmed by the Belgaum Court, and he brought into Court the said sum of Rs. 128-7-10. On the 19th June, 1893, while the above proceedings were going on, a third decree-holder (the opponent) had applied to the second class Subordinate Judge at Saundatti for execution of his decree. He objected to the confirmation of the sale applied for by the applicant. The Subordinate Judge allowed the objection and refused confirmation of the sale. The applicant then applied to the High Court under its extraordinary jurisdiction:—*Held*, that the Judge of the Belgaum Court had concurrent jurisdiction to sell and confirm the sale notwithstanding the execution, and leave to sell by the Saundatti Court. The application to the Saundatti Court by *A* was therefore superfluous and ought to have been rejected, inasmuch as the sale had already been confirmed by a competent Court (*viz.*, the Court of Belgaum), and nothing further remained to be done in regard to it. ANDANAPA *v.* BHIMRAO ANNAJI.

[19 Bom. 539

(*f*) SALE PENDING APPEAL.

30.—*Decree setting aside sale—Second sale pending appeal to which decree-holder not made party—Confirmation of first sale in appeal—Purchasers*

SALE IN EXECUTION OF DECREE —*continued.*

(5) INVALID SALES—*concluded.*

(*f*) SALE PENDING APPEAL—*concluded.*

of the same property in execution of decree, Priority between—Laches of appellant in not obtaining stay of execution.] A sale in execution of a mortgage decree was set aside, and the auction-purchaser appealed to the High Court without making the decree-holder a party to the appeal. The decree-holder applied for a fresh sale, and at a second sale held pending the appeal purchased the property and obtained possession. On appeal to the High Court the first sale was upheld, and an order passed confirming the sale. In a suit by the decree-holder purchaser at the second sale:—*Held*, that the effect of plaintiff's not being made a party to the appeal is practically the same as if he had not been a party to the suit:—*Held*, also, that the plaintiff was not a party to the subsequent proceedings and could not be said to have bid at the sale with the effect of those proceedings hanging over his head. *Jan Ali* v. *Jan Ali Chowdhry*, 1 B. L. R. A. C. 56; 10 W. R. 154, referred to:—*Held*, that the defendant could have applied to the High Court for stay of execution, and if the execution had been stayed, the present litigation would not have arisen. GONESH PERSHAD *v.* FAZUL EMAM KHAN.

[23 Calc. 857

(6) SETTING ASIDE SALE.

(*a*) GENERAL CASES.

31.—*Civil Procedure Code* (1882), *s.* 310*A* (*a*)—*Right of judgment-debtor to set aside sale on deposit of the amount of debt—Poundage money—Costs.*] A judgment-debtor, whose land had been sold in execution, is entitled to have the sale set aside under the Civil Procedure Code, s. 310A (*a*), if he deposits 5 per cent. of the purchase-money, including that deducted by the Court for poundage, and fulfils the requirements of cl. (*b*), even though something more on account of the poundage was recoverable from him under the head of costs. MUTHU AYYAR *v.* RAMASAMI SASTAIAL.

[20 Mad. 158

32.—*Sale under mortgage decree—Sale in execution of a money decree, Effect of, before the sale in execution, of mortgage decree confirmed—Code of Civil Procedure* (1882), *ss.* 310*A*, 311 *and* 312 *—Effect of sale not being set aside either under ss.* 310*A or* 311 *of the Code.*] A certain property was sold on the 16th August, 1895, in execution of a mortgage decree, dated the 9th December, 1892, and was purchased by *A*. In the meantime an eight-anna share of the said property was sold in execution of a money-decree and was purchased by *R* on the 22nd May, 1893. On the 10th September, 1895, the judgment-debtor applied to set aside the mortgage sale under s. 311 of the Code of Civil Procedure, and, on the 14th September, 1895, a similar application was made by *R*. On the 28th March, 1896, both these applications came on for hearing before the Subordinate Judge who passed no order; and on the same date *R* presented a

SALE IN EXECUTION OF DECREE —*continued.*

(6) SETTING ASIDE SALE—*continued.*

(*a*) GENERAL CASES—*concluded.*

petition asking the Court to set aside the sale held in execution of the mortgage decree, upon payment by him of the mortgage money, with interest and costs, and also to declare that he might be entitled to redeem the property. On the 30th March, 1895, the Subordinate Judge allowed the petition and ordered the sale to be set aside upon the aforesaid terms:—*Held*, that, inasmuch as under s. 312 of the Code of Civil Procedure, *A* was entitled to have an order confirming the sale of the 16th August, 1895, unless the sale were set aside under s. 310A or s. 311 of the Code of Civil Procedure, and, as the sale was not set aside under either of those sections, the Court below had no jurisdiction to set aside the sale upon payment by the applicant of the mortgage money with interest and costs. *Birj Mohun Thakur* v. *Uma Nath Chowdhry*, I. L. R. 20 Calc. 8, referred to. KHETTER NATH BISWAS *v.* FAIZUDDIN ALI.

[24 Calc. 682

(*b*) IRREGULARITY.

33.—*Civil Procedure Code* (1882), *s.* 311—*Application to set aside a sale of a tenure by a purchaser from the judgment-debtor prior to attachment.*] A person who claims to be a purchaser of a tenure prior to attachment from a judgment-debtor whose interest in the tenure has been sold in execution of a decree for its own arrears of rent, is entitled to apply, under s. 311 of the Code of Civil Procedure, to set aside the sale. *Asmutunnissa Begum* v. *Ashruff Ali*, I. L. R. 15 Calc. 488, distinguished. AUBHOYA DASSI *v.* PUDMO LOCHUN MONDOL.

[22 Calc. 802

34.—*Civil Procedure Code* (1882, *as amended by Act V of* 1894), *s.* 310*A—Judgment-debtor under decree on mortgage passed under Transfer of Property Act, s.* 88*—Effect of former application by other judgment-debtor under s.* 311 *of the Civil Procedure Code.*] The judgment-debtor in a mortgage decree passed under s. 88 of the Transfer of Property Act (IV of 1882) may apply to set aside a sale under the provisions of s. 310A of the Civil Procedure Code (XIV of 1882, as amended by Act V of 1894). After the rejection by the lower Court of an application under s. 310A judgment-debtors other than the applicant made an application under s. 311 of the Code:—*Held*, that the present application under s. 310A was not barred by reason of the proviso to that section. ASHRUF ALI CHOWDHRY *v.* NET LAL SAHU.

[23 Calc. 682

35.—*Code of Civil Procedure* (1882), *ss.* 310*A*, *and* 311 *— Meaning of the words, "he shall not be entitled to make an application under this section" in the proviso of s.* 310*A—Civil Procedure Code Amendment Act* (*V of* 1894).] The words "he shall not be entitled to *make* an application under this section" in the proviso of s. 310A do not

SALE IN EXECUTION OF DECREE —*continued.*

(6) SETTING ASIDE SALE—*continued.*

(*b*) IRREGULARITY—*continued.*

mean merely "he shall not be able to *present* an application" under the section, but the word *make* means "carry on" or "prosecute." In a case where, after an application under s. 310A of the Code of Civil Procedure, another application was made under s. 311 of the Code, the applicant was not entitled to have the benefit of the former section. RAJENDRA NATH HALDAR *v.* NILRATAN MITTER.

[23 Calc. 958

36.—*Civil Procedure Code* (1882), *s.* 311—*Application by person not party to decree.*] Land having been sold in execution of decree, one claiming that it had been held by the judgment-debtor *benami* for him, applied that the sale be cancelled under s. 311. He was not a party to the decree, and on that ground his petition was dismissed:—*Held* that the fact of the petitioner being a stranger to the decree did not preclude him from obtaining the relief sought under s. 311. TIMMANNA BANTA *v.* MAHABALA BHATTA.

[19 Mad. 167

37.—*Civil Procedure Code* (1882), *s.* 311—*Application to set aside sale in execution—Plea to jurisdiction of Court to sell—Civil Procedure Code, s.* 320.] *Held*, that in an application under s. 311 of the Code of Civil Procedure to set aside a sale in execution of a decree, it is not competent to the applicant to raise, nor to the Court to entertain, any plea to the jurisdiction of the Court executing the decree, as, for example, a plea that the property sold, or part of it, was ancestral and ought to have been sold in accordance with the provisions of s. 320 of the Code. SHIRIN BEGAM *v.* AGHA ALI KHAN.

[18 All. 141

38.—*Insanity of judgment-debtor intervening before sale—Necessity to prove substantial injury —Civil Procedure Code, s.* 311.] A suit was brought by *V* to have it declared that the sale of his property in execution of a decree was void owing to the fact that subsequent to decree and prior to sale, he had been declared insane under Act XXXV of 1858 The second defendant was the auction-purchaser:—*Held* by BEST, J., that objection could be taken under s. 311, Civil Procedure Code, on the above ground before the sale had been confirmed and certificate granted:—*Held* by SUBRAMANYA AYYAR, J., that these facts only amounted to a material irregularity within s. 311, Civil Procedure Code, and that the plaintiff must prove substantial injury. NARAYANA KOTHAN *v.* KALIANASUNDARAM PILLAI.

[19 Mad. 219

39.—*Omission to attach property—Decree on mortgage.*] The omission to cause an attachment to be made in execution of a decree for the realisation of a mortgage debt, does not affect the validity of a sale of the mortgaged property in execution of such decree. TINCOURI DEBYA *v.* SHIB CHANDRA PAL CHOWDHURY.

[21 Calc. 639

MUNIAPPA NAIK *v.* SUBRAMANIA AYYAN.

[18 Mad. 437

40.—*Sale in execution held in pursuance of an attachment made under a wrong section of Civil Procedure Code—Civil Procedure Code, ss.* 268 *and* 274 *—Irregularity in attachment.*] *Held* that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction-purchaser, even though the attachment subsequent to which such sale was held might have been made under a wrong section of the Code of Civil Procedure. *Balkrishna* v. *Masuma Bibi*, I. L. R 5 All. 142; L. R. 9 I. A 182; *Mahadeo Dubey* v. *Bhola Nath Dichit*, I. L. R. 5 All. 86; *Ram Chand* v. *Pitam Mal*, I. L. R. 10 All. 506; and *Karim-un-nisa* v. *Phul Chand*, I. L. R. 15 All. 134, referred to. SHEO CHARAN LAL *v.* SHEO SEWAK LAL.

[18 All. 469

41.—*Civil Procedure Code* (1882), *s.* 311—*Dissuading persons from bidding — Non-disclosure amounting to fraud.*] A creditor had obtained a decree on the footing of a mortgage and in execution brought the property of his judgment-debtor to sale. At the time of sale the decree-holder, who had obtained leave to bid, entered into an agreement with *P* to the effect that if *P* would dissuade other persons from bidding, he (the decree-holder) would purchase the whole property for Rs. 83,000 and convey it on certain terms to *P*. *P* thereupon exerted his influence and succeeded in persuading would-be purchasers from bidding and, in consequence, the property was sold on the 11th April 1891 for Rs. 83,000 which was a little more than half its actual value. The sale was confirmed on the 29th June, 1891, and the judgment-debtor who at the time of the sale was a minor under the Court of Wards, attained his majority on the 21st April, 1894, and filed this petition praying to set aside the sale on the 15th May, 1894:—*Held*, that the omission on the part of the decree-holder to disclose the agreement to the Court amounted to a fraud upon the Court entitling the judgment-debtor to say that in point of law no leave to bid was granted and that the withholding of information is no less a ground for cancelling a sale than actual misrepresentation on the part of the applicant who becomes the purchaser, and that therefore the sale must be set aside. JAYINILABDIN RAVUTTAN *v.* VIJIA RAGUNADHA AYYARAPPA MAIKAN GOPALAR.

[19 Mad. 315

42.—*Civil Procedure Code* (1882), *ss.* 311 *and* 224 *—Omission to transmit certificate to Court executing decree.*] The omission to transmit to the

SALE IN EXECUTION OF DECREE —*continued.*

(6) SETTING ASIDE SALE—*continued.*

(*b*) IRREGULARITY—*continued.*

Court executing the decree the certificate required by s. 224, Civil Procedure Code, is a mere irregularity which would not vitiate the sale. ABBUBAKER SAHEB *v.* MOHIDIN SAHEB.

[20 Mad. 10

43.—*Civil Procedure Code* (1882), *ss.* 290 *and* 311 —*Material irregularity—Proof of substantial injury.*] The non-compliance with the requirement of s. 290 of the Civil Procedure Code that before sales of immoveables in execution of decree, thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of s. 311. But its effect is not to make the sale a nullity without proof of substantial injury thereby to the judgment-debtor. As to this the latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN.

[21 Calc. 66
[L. R. 20 I. A. 176

44.—*Civil Procedure Code* (1882), *s.* 311—*Application to set aside sale in execution—Proof of substantial injury.*] It is not sufficient for an applicant under s. 311 of the Code of Civil Procedure, to show that there has been material irregularity in publishing or conducting a sale, and that a price below the market value has been realised; but he must go on to connect the one with the other, that is, the loss with the irregularity as effect and cause, by means of direct evidence. *Tassaduk Rasul Khan* v. *Ahmad Husain*, I. L. R. 21 Calc. 66, referred to. JAGAN NATH *v.* MAKUND PRASAD.

[18 All. 37

45.—*Civil Procedure Code* (1882), *s.* 311—*Application to set aside sale in execution—Proof of substantial injury.*] *Held*, that in an application under s. 311 of the Code of Civil Procedure to set aside a sale in execution of a decree, it is necessary for the applicant to show not only that there has been a material irregularity in publishing or conducting the sale, but also that substantial injury had been sustained in consequence of such material irregularity. *Arunachellam* v. *Arunachellam*, I. L. R. 12 Mad. 19; and *Tasadduk Rasul Khan* v. *Ahmed Husain*, I. L. R. 21 Calc. 66, referred to. SHIRIN BEGAM *v.* AGHA ALI KHAN.

[18 All. 141

46.—*Material irregularity—Code of Civil Procedure* (1882), *ss.* 291 *and* 311—*Sale at inadequate price owing to hour of sale not being fixed.*] Where a debtor's property under attachment had been ordered to be sold at a fixed date, after the disposal of a certain claim thereto made under s. 278 of the Code of Civil Procedure, but no hour had been fixed for the sale as required by s. 291, and the property was sold at a very inadequate price by reason of the paucity of bidders:—*Held*, affirming the decision of the Sub-

SALE IN EXECUTION OF DECREE —*continued.*

(6) SETTING ASIDE SALE—*continued.*

(*b*) IRREGULARITY—*concluded.*

ordinate Judge, that there had been material irregularity causing substantial injury to the debtor: and that it is sufficient under s. 311 of the Code, if the evidence, though not "direct evidence," shows that the injury was a necessary result of the irregularity complained of. *Tassaduk Rasul Khan* v. *Ahmed Husain*, I. L. R. 21 Calc. 66; L. R. 20 I. A. 176, explained. SORNO MOYEE DEBI *v.* DAKIÑA RANJAN SANYAL.

[24 Calc. 291

47.—*Civil Procedure Code* (1882), *ss.* 291 *and* 311 —*Material irregularity—Substantial loss—Inadequacy of price.*] Where a material irregularity is proved to have occurred in the conduct of a Court-sale, and it is shown that the price realised is much below the true value, it may ordinarily be inferred that the low price was a consequence of the irregularity even though the manner in which the irregularity produced the low price be not definitely made out. When a sale is adjourned under s. 291, the provisions of that section must be followed with exactitude. VENKATA-SUBBARAYA CHETTI *v.* ZAMINDAR OF KARVETI-NAGAR

[20 Mad. 159

(*c*) RIGHTS OF PURCHASERS.

48.—*Recovery of purchase-money—Portion of the property sold belonging to a stranger—Civil Procedure Code* (1882), *ss.* 313, 315 *and* 316—*Rights of purchaser — Warranty of title.*] Where a Court-sale in execution of a decree is not vitiated by fraud, the only extent to which the purchaser can claim relief is that indicated by s. 315 of the Civil Procedure Code. The effect of ss. 313, 315 and 316 of the Code is that the right, title and interest of the judgment-debtor passes to the purchaser at a Court-sale subject, however, to the condition that the purchaser may recover back his purchase-money when he finds that the judgment-debtor has no saleable interest at all. The implied warranty of title in respect of sales by private contract cannot be extended to Court-sales except so far as such extension is justified by the processual law in India, *viz.*, by s. 315 of the Civil Procedure Code. *Dorab Ally Khan* v. *Abdool Azeez*, L. R. 5 I. A. 116, followed. SUNDARA GOPALAN *v.* VENKATA VARADA AYYANGAR.

[17 Mad. 228

49.—*Return of purchase-money when judgment-debtor found to have no saleable interest in property sold—Procedure for finding the fact of his having no interest—Notice to judgment-creditor—Parties—Civil Procedure Code, ss.* 313, 315 *and* 622—*Superintendence of High Court.*] One *V* obtained a decree against *A*, and in execution sold certain land which was purchased by *E*, who got a certificate of sale, and obtained possession. Subsequently the land was claimed by one *B*, who sued *A*, the judgment-debtor, and *E*, the

SALE IN EXECUTION OF DECREE —*concluded.*

(6) SETTING ASIDE SALE—*concluded.*

(*c*) RIGHT OF PURCHASERS—*concluded.*

auction-purchaser, to set aside the sale and establish his title to the land. He succeeded in his suit, and in execution got possession of the land. Thereupon *E* (the auction-purchaser) applied under s. 315 of the Civil Procedure Code (XIV of 1882) for a refund of his purchase-money, and the Subordinate Judge made an order directing *V*, the decree-holder, to repay it. *V* contended that he ought not to have been ordered to refund the money without having an opportunity of proving that the property had been properly sold in execution of his decree against *A*, and that, as he had not been made a party to *B's* suit, he had had no opportunity of doing this. On application to the High Court, *held*, that the order of the Subordinate Judge for the restitution of the purchase-money was wrong. Section 315 provides that the purchase-money paid at an execution-sale is to be returned when it is found that the judgment-debtor has no saleable interest in the property sold. It does not prescribe how the fact is to be ascertained, but the conclusion from s. 313 as well as from general principles is that it must be a finding on some proceedings to which the judgment-creditor was a party, or at any rate of which he had notice. In the present case there was no finding on which the Subordinate Judge could base his order for the restitution of the purchase-money. VITHOBA *v.* ESAT.

[18 Bom. 594

SALE-PROCEEDS.

——, Distribution of.

See COLLECTOR.

[16 All. 1

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &c.

[18 Bom. 61

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[18 Bom. 458

—— of sale by one of several co-parceners.

See HINDU LAW — PARTITION — PROPERTY LIABLE TO PARTITION.

[18 Mad. 73

SALSETTE, LAW APPLICABLE IN.

—Christian inhabitants of the Island of Salsette —Converts from Hinduism to Christianity—Succession to property before Succession Act—Primogeniture—Hindu law, how far applicable—Manager of family—Mortgage by manager when binding on family property—Suit for redemption of mortgage—Sale in execution of decree—Purchaser, Rights of—Power of Christian inhabitant of Salsette to make a will dealing with his share in ancestral property.] The law of a conquered territory continues in force until altered by the Crown or the Legislature. The Island of Salsette was conquered from the Marathas by the British in 1774, and the law of succession for the Christian inhabitants of the island remained unaltered until the passing of the Indian Succession Act (X of 1865). Until that Act was passed, the law of primogeniture was not in force among the Christian inhabitants of Salsette. In the absence of a widow and daughter, the sons took the property of their father in equal shares. *Quære:* Whether they did so under the Hindu law or the Portuguese law, or by force of usage existing among them. A mortgage of certain property was made in 1875 by the eldest of three brothers, *P*, *M* and *E*, who were Christian inhabitants of the Island of Salsette. They had inherited the property from their father, who died in 1840. The family had originally been a Hindu family, but had been converted to Christianity. *E* died in 1876, and *M* died in 1883, bequeathing his interest in the property to his nephew, the plaintiff, who was *P's* son. In that year (1883) the mortgagee sued *P* alone upon the mortgage and obtained a decree which he afterwards assigned to the defendant, who sold the mortgaged property in execution of the decree, and at the sale purchased the property himself. The plaintiff now sued to redeem the property, and the question arose (1) whether under the law applicable to the Christian inhabitants of Salsette, the eldest brother *P* had succeeded on the father's death to the whole of the family property, and (2) if not, then to what extent the mortgage in question bound the property of the family:—*Held* (1) that the law of primogeniture prior to the passing of the Indian Succession Act (X of 1865) did not exist among the Christian inhabitants of Salsette, and that *P*, although eldest son, had not succeeded to the whole of the family property. He and his brothers took equal shares in the property of their father. (2) That the mortgage by *P* had been authorised by the family and was for family purposes and was binding upon the family property. Although *P* and his brothers could not be regarded as co-parceners under Hindu law, yet, having regard to the fact that they were descendants of converts from Hinduism, among whom Hindu usages largely prevailed, the question should be treated in much in the same way as if the family was still a Hindu family, and the Court would not require the same direct proof of the manager's authority to mortgage as it would in the case of an English manager under similar circumstances. (3) That the plaintiff was not entitled to redeem. What was intended to be sold at the sale held in execution of the decree upon the mortgage was the whole interest in the mortgaged property. The defendant purchased that interest subject to the right of the plaintiff to show that his share derived from *M* was not

SALSETTE, LAW APPLICABLE IN
—*concluded.*

bound by the mortgage, and he had failed to do so. *M's* share as well as *P's* had passed by the sale. (4) A member of the Christian community of the Island of Salsette is entitled to deal with his share in ancestral property by will. JALBHAI ARDESHIR SHET *v.* MANOEL.

[19 Bom. 680

SALT, SEARCH FOR CONTRABAND.

See ESCAPE FROM CUSTODY.

[19 Mad. 310

SALT ACT (XII OF 1882).

——, **s. 11.**—*Limitation prescribed for charging with offence—Fraud in concealing date of offence.*] The provisions of s. 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of s. 11 of the Indian Salt Act (XII of 1882) are not affected by that section. QUEEN-EMPRESS *v.* NAGESHAPPA PAI.

[20 Bom. 543

SALT-PANS, LEASE OF.

See STAMP ACT, SCH. II, ART. 13.

[18 Bom. 546

SALVAGE.

——, Consolidation of claims for.

See PRACTICE—CIVIL CASES — ADMIRALTY COURTS.

[22 Calc. 511

SANAD.

——, Grant of

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[17 Mad. 384
[L. R. 21 I. A. 93

SANCTION FOR PROSECUTION. *Col.*

1. Where Sanction is necessary or otherwise ... 1176
2. Nature, Form, and Sufficiency of Sanction ... 1176
3. Power to Grant Sanction ... 1177
4. Revocation of Sanction ... 1179
5. Expiry of Sanction ... 1179
6. Fresh Sanction ... 1180

See COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[22 Calc. 586

See PENAL CODE, S. 210.

[23 Calc. 971

See REGISTRATION ACT, S. 74.

[24 Calc. 755

SANCTION FOR PROSECUTION—
continued.

——, Application for.

See PRACTICE—CRIMINAL CASES—APPROVERS.

[24 Calc. 492

——, Order for.

See LETTERS PATENT, HIGH COURT, CL. 15.

[17 Mad. 105

(1) WHERE SANCTION IS NECESSARY OR OTHERWISE.

1.—*Criminal Procedure Code* (1882), *s.* 195—*Abetment of offence—Penal Code, s.* 109.] Though sanction to prosecute is necessary in cases falling under the sections of the Penal Code set forth in s. 195, Criminal Procedure Code, no such sanction is required previous to the prosecution of a person charged with the abetment of such offences. QUEEN-EMPRESS *v.* ABDUL KADAR SHERIFF SAHEB.

[20 Mad. 8

(2) NATURE, FORM, AND SUFFICIENCY OF SANCTION.

2.—*Criminal Procedure Code* (1882), *s.* 195—*Form of sanction for prosecution for false evidence — Requisites of a proper sanction.*] A sanction to prosecute for giving false evidence should specify clearly the statement alleged to be false, so that the person sought to be charged may be definitely informed what is the criminal act alleged against him. IN RE JIVAN AMBAIDAS.

[19 Bom. 362

3.—*Criminal Procedure Code* (1882), *s.* 195—*Necessary contents of application for sanction.*] An application for sanction to prosecute for forgery or perjury must indicate precisely the document in respect of which forgery is said to have been committed, or must set forth in detail the statements alleged to be false showing the place where and the occasion on which such alleged false statements were made. BALWANT SINGH *v.* UMED SINGH.

[18 All. 203

4.—*Criminal Procedure Code* (1882), *ss.* 195 *and* 476—*Nature of sanction — Sanction granted by Court without application being made by the person to whom it is granted.*] A sanction to prosecute under s. 195 of the Code of Criminal Procedure presupposes an application for sanction, and where no such application is made, a Court ought not to take upon itself to grant sanction, but should take action in the manner provided by s. 476 of the Code. *Empress of India v. Gobardhan Das*, I. L. R. 3 All. 62, referred to. IN THE MATTER OF THE PETITION OF BANARSI DAS.

[18 All. 213

5.—*Sufficiency of sanction—Notice to show cause not a necessary preliminary—Criminal Procedure Code* (1882), *s.* 195.] An order under s. 195 of

SANCTION FOR PROSECUTION—*continued.*

(2) NATURE, FORM, AND SUFFICIENCY OF SANCTION—*concluded.*

the Code of Criminal Procedure sanctioning a prosecution for perjury is not bad by reason of notice to show cause not having been issued previously to the person against whom such order is made. *Krishnanund Das* v. *Hari Bera*, I. L. R. 12 Calc. 58, followed. MANGAR RAM *v.* BEHARI.

[18 All. 358

(3) POWER TO GRANT SANCTION.

6.—*Power of Civil Court to commit for forgery or perjury — Criminal Procedure Code* (1882), *ss.* 195 *and* 476—*Witness of party to proceeding.*] The power given to a Civil Court under Chap. XXXV of the Code of Criminal Procedure (Act X of 1882) to take action regarding "any offence referred to in s. 195," is not ordinarily restricted, in regard to offences relating to documents, to such offences only when committed by a party to the proceeding in which the document was given in evidence. It extends also to such offences when committed by a witness of the party. IN RE DEVJI VALAD BHAVANI.

[18 Bom. 581

7.—*Power of District Judge to order prosecution for forgery committed before Munsif—Witness—Criminal Procedure Code* (1882), *ss.* 195 *and* 476.] Where a defendant in a suit in the Court of a Munsif applied to the District Judge for sanction under s. 195 of the Code of Criminal Procedure to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but, purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness:—*Held*, that the Judge's order was made without jurisdiction, the offence in respect of which the sanction was directed not having been committed before him, nor brought to his notice in the course of a judicial proceeding. IN THE MATTER OF THE PETITION OF MATHURA DAS.

[16 All. 80

8.—*Criminal Procedure Code* (1882), *s.* 195—"*Subordinate Court*"—*Jurisdiction of the High Court to revoke or grant sanction in cases in which appeal lies to "Her Majesty in Council" from the Court of the Recorder of Rangoon.*] In matters relating to the grant of sanction to prosecute under s. 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which appeals from the former ordinarily lie, *i.e.*, lie in the majority of cases. Though the decree in the present instance was appealable to "Her Majesty in Council," still, as appeals from the Court of the Recorder of Rangoon ordinarily lay to the High Court, the former was held to be subordinate to the latter

SANCTION FOR PROSECUTION—*continued.*

(3) POWER TO GRANT SANCTION—*contd.*

Court within the meaning of the section. *In re Anant Ramchundra Lotlikar*, I. L. R. 11 Bom. 438, followed. MADURAY PILLAY *v.* ELDERTON.

[22 Calc. 487

9.—*Criminal Procedure Code* (1882), *ss.* 195, 407 *and* 476—*Application for sanction to prosecute—Offence committed before second class Magistrate—Magistrate, Jurisdiction of—Application by letter for sanction to prosecute—District Magistrate's order sanctioning prosecution and prescribing the Court in which the prosecution should take place.*] The District Forest Officer applied by letter to the District Magistrate to take such action as he deemed fit against one *S* who, for reasons stated by the District Forest Officer, was suspected of having abetted the offence of giving false evidence in the course of proceedings instituted on behalf of the Forest Department in the Court of a second class Magistrate. The District Magistrate had previously directed that all appeals from the second class Magistrate should be heard by the Deputy Magistrate, but he passed an order himself whereby he (1) sanctioned the prosecution of *S*; and (2) directed that it should take place in the Court of the Head Assistant Magistrate:—*Held* (1) that the District Magistrate had no jurisdiction to sanction the prosecution, for the reason that he was not the ordinary appellate authority; (2) that the second part of his order was irregular for the reasons that it was not authorised by the Criminal Procedure Code, s. 195, and he had no jurisdiction to act under s. 476, since the alleged offence was not brought to his notice in the course of a judicial proceeding. QUEEN-EMPRESS *v.* SUBBARAYA PILLAI.

[18 Mad. 487

10.—*Inquiry, preliminary to exercise of power to grant sanction—Offence by definite person or persons—Criminal Procedure Code* (1882), *s.* 476—*Civil Procedure Code* (1882), *s.* 643.] The provisions of s. 476 of the Criminal Procedure Code as well as of s. 643 of the Civil Procedure Code, clearly indicate that the Court taking action under either section must not only have ground for inquiry into an offence of the description referred to in those sections respectively, but must also be *primâ facie* satisfied that the offence has been committed by some definite person or persons against whom proceedings in the Criminal Court are to be taken. *Khepunath Sikdar* v. *Grish Chunder Mukerji*, I. L. R. 16 Calc. 730; and *Chaudhari Mahomed Izarul Huq* v. *Queen-Empress*, I. L. R. 20 Calc. 349, followed. A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under s. 643 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group. MAHOMED BHAKKU *v.* QUEEN-EMPRESS.

[23 Calc. 532

SANCTION FOR PROSECUTION—*continued.*

(3) POWER TO GRANT SANCTION—*concluded.*

11.—*Criminal Procedure Code* (1882), *s.* 476—*Inquiry before issue of an order under s.* 144—*Criminal Procedure Code—Judicial proceeding—False evidence.*] A Magistrate, making an inquiry before issue of an order under the Criminal Procedure Code, s. 144, is acting in a stage of a judicial proceeding, and has therefore jurisdiction to take action under s. 476, if he is of opinion that false evidence has been given before him. QUEEN-EMPRESS *v.* TIRUNARASIMHA CHARI.

[19 Mad. 18

12.—*Criminal Procedure Code* (1882), *s.* 195—*Power of Court to go outside record.*] A Magistrate in deciding whether to sanction under Criminal Procedure Code, s. 195, a prosecution for giving false evidence, has power to hold an inquiry and record other evidence besides that in the case before him, in the course of which the offence is supposed to have been committed. QUEEN-EMPRESS *v.* MOTHA.

[20 Mad. 339

13.—*Criminal Procdure Code* (1882), *s.* 195—"*Court to which appeals ordinarily lie*"—*Collector—District Judge.*] For the purpose of granting or revoking a sanction to prosecute refused or granted under s. 195 of the Code of Criminal Procedure, an Assistant Collector of the first class is subordinate to the District Judge. *Hari Prasad* v. *Debi Dial*, I. L. R. 10 All. 582, followed. *Queen-Empress* v. *Ajudhia Prasad*, Weekly Notes, All. (1895) 121, considered. SHANKAR DIAL *v.* VENABLES.

[19 All. 121

(4) REVOCATION OF SANCTION.

14.—*Criminal Procedure Code* (1882), *s.* 195—*Revocation of sanction granted in respect of an offence committed in the course of a civil suit of over Rs.* 5,000 *in value—Valuation of suit.*] Where sanction to prosecute is granted in respect of perjury committed in the course of a civil suit, the valuation of such civil suit is immaterial to the question of the Court to which an application under s. 195 of the Code of Criminal Procedure for revocation of the order granting sanction will lie. GANGA DEI *v.* SHER SINGH.

[17 All. 51

(5) EXPIRY OF SANCTION.

15.—*Prosecution commenced more than six months after granting of sanction, the period intervening being close holidays—Penal Code, ss.* 193 *and* 471—*Criminal Procedure Code* (1882), *ss.* 195 *and* 537—*Irregularity in criminal proceedings—Magistrate, Jurisdiction of—General Clauses Consolidation Act* (*I of* 1887).] Sanction to prosecute *R* for offences under ss. 193 and 471 of the Penal Code, committed in the course of a judicial proceeding, was granted on the 5th September, 1893, and the prosecution was commenced before the Magistrate on the 7th March, 1894, the 4th March being a Sunday, and the 5th and 6th

SANCTION FOR PROSECUTION—*concluded.*

(5) EXPIRY OF SANCTION—*concluded.*

Court holidays. *R* was committed to the Sessions:—*Held*, that, as s. 7 of Act I of 1887 does not apply to the Code of Criminal Procedure of 1882, and there is no provision of law by which the period provided by s. 195 during which a sanction may remain in force can be extended by reason of the period expiring during Court holidays, the proceedings of the Magistrate were without jurisdiction, and the commitment must be quashed:—*Held*, further, that s. 537 of the Code of Criminal Procedure was not intended to override the provisions of s. 195, nor can it be said that there has not been a failure of justice in the prosecution of a person after the period for which the sanction was in force has expired. RAJ CHUNDER MOZUMDAR *v.* GOUR CHUNDER MOZUMDAR.

[22 Calc. 176

(6) FRESH SANCTION.

16.—*Criminal Procedure Code* (1882), *s.* 195—*Fresh sanction, Grant of, after expiry of six months from the date of the first sanction.*] If six months expire after the grant of sanction under s. 195 of the Criminal Procedure Code, and no prosecution is commenced under it within that time, it is not open to the prosecutor to procure a fresh sanction and to institute proceedings upon such fresh sanction. The words "six months from the date on which the sanction was given" must be taken to mean six months from the date on which it was given in the first instance, and not from any subsequent date on which the purport of the order might have been repeated. The Munsif, who tried the suit out of which the application for sanction arose, refused to sanction any prosecution; the Munsif, who originally sanctioned the prosecution, was a different officer; while the Munsif who gave the fresh sanction was neither the Munsif who tried the case nor the Munsif who sanctioned the prosecution originally. *Semble*: Under these circumstances it is extremely doubtful whether the sanction was such as is contemplated by s. 195 of the Criminal Procedure Code. DARBARI MANDAR *v.* JAGOO LAL.

[22 Calc. 573

17.—*Criminal Procedure Code* (1882), *s.* 195—*Sanction not acted upon within six months—Lapse of sanction.*] If an order under s. 195 of the Code of Criminal Procedure lapses, not having been acted upon within six months, that does not bar the granting of fresh sanction on the same grounds if a sufficient reason for the delay be shown. *Darbari Mandar* v. *Jagoo Lal*, I. L. R. 22 Calc. 573, not followed. *Gulab Singh* v. *Debi Prasad*, I. L. R. 6 All. 45; and *Baldeo Singh* v. *Prasadi*, Weekly Notes, All. (1892) 245, referred to. MANGAR RAM *v.* BEHARI.

[18 All. 358

SAPINDAS.

See HINDU LAW — INHERITANCE — SPECIAL HEIRS—MALES—COUSINS.

[22 Calc. 339

SCHEDULED DISTRICTS ACT (XIV OF 1874).

See GUARDIANS AND WARDS ACT, 1890, s. 1.

[18 Mad. 227

SEAWORTHINESS.

See BILL OF LADING.

[19 Bom. 639

SECOND APPEAL.

See CASES UNDER SPECIAL OR SECOND APPEAL.

SECRETARY OF MUNICIPAL BOARD, ORDER OF.

See STAMP ACT, SCH. I, ART. 22.

[19 All. 293

SECRETARY OF STATE.

——, Suit against.

See COSTS—TAXATION OF COSTS.

[17 Mad. 162

——, Suit by, or on behalf of.

See LIMITATION ACT, ART. 149.

[19 Mad. 165

SECURITY FOR COSTS.

Col.

1. Suits ... 1181
2. Appeals ... 1182

See LETTERS PATENT, HIGH COURT, CL. 15.

[21 Calc. 473

(1) SUITS.

1.—*Civil Procedure Code* (1882), *s.* 380—*Cantonment of Secunderabad.*] For the purposes of s. 380 of the Code of Civil Procedure, the British Cantonment of Secunderabad is a place out of British India. HOSSAIN ALI MIRZA *v.* ABID ALI MIRZA.

[21 Calc. 177

2.—*Civil Procedure Code* (1882), *s.* 380—*Suit for amount of legacy under will—Suit in nature of administration suit—Discretion of Court—Construction of Statutes—"May"—"Shall."*] The power given to the Court under s. 380 of the Civil Procedure Code to order security for costs is discretionary, and one which the Court ought, or ought not, to exercise according to the circumstances of each case; and unless it is shown that the exercise of the power is necessary for the reasonable protection of the defendant, the Court ought not to interfere. *Degumbari Dabi* v. *Aushotosh Banerjee*, I. L. R. 17 Calc. 613, approved of. Where the plaintiff in a suit against the executors of a will for the amount of a legacy had, on account of the conduct of the defendants, no alternative but to seek the assistance of the Court, and the defendants stated that the assets were not sufficient to pay all the legacies in full, and it was therefore clear that the suit would have to proceed as an administration suit in which the plaintiff could in no event be liable for the defendant's costs:—*Held*, that the Court would not order the plaintiff, although she was not in possession of any immoveable property within British India, to give security for the costs of the suit. A plaintiff who is entitled under a will to a beneficial interest in a part of the surplus income derived from immoveable property does not become thereby "possessed of immoveable property" within the meaning of s. 380. IN THE GOODS OF PREMCHAND MOONSHEE. BIDHATREE DASSEE *v.* MUTTY LALL GHOSE.

[21 Calc. 832

(2) APPEALS.

3.—*Civil Procedure Code* (1889), *s.* 549—*Poverty of appellant—Ground for ordering security for costs of appeal.*] Under the circumstances of this case, the Court refused an application that the appellant, on the ground that he was a person without means, should give security for the costs of the appeal. HEWETSON *v.* DEAS.

[21 Calc. 526

4.—*Form and contents of order for security for costs—Omission to state amount—Practice—Civil Procedure Code* (1882), *s.* 549.] Where a Court acting under s. 549 of the Code, orders an appellant to give security for costs, it is not necessary that any specific sum for which security is to be given should be named in the order for security. It is sufficient for the order to direct the appellant to furnish security within a time to be stated "for the costs of the appeal" or "for the costs of the original suit," or "for the costs of the appeal and of the original suit." *Thakur Das* v. *Kishori Lal*, I. L. R. 9 All. 164, overruled on this point. LEKHA *v.* BHAUNA.

[18 All. 101

5.—*Extension of time for furnishing security—Exceptional circumstances—Civil Procedure Code* (1882), *s.* 549.] The appellant applied for an extension of the time for giving security for the costs of the appeal on the ground that, in the exceptional state of things in Bombay caused by the prevalence of the plague, she had been unable to raise the money required:—*Held*, that under the circumstances the application should be granted. Section 549 of the Civil Procedure Code (Act XIV of 1882) does not absolutely preclude such an order if the circumstances render it just to make it. The Court cannot lay down a hard-and-fast rule that in no case after the time for giving security has expired can an appellant be allowed further time. JUMNABAI *v.* VISSONDAS RUTTONCHUND.

[21 Bom. 576

SECURITY FOR GOOD BEHAVIOUR.

1.—*Criminal Procedure Code* (1882). *ss.* 110 *and* 526—*Transfer of proceedings.*] Proceedings under s. 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the

SECURITY FOR GOOD BEHAVIOUR —*concluded.*

district within which such proceedings have been lawfully instituted. IN THE MATTER OF THE PETITION OF AMAR SINGH.

[16 All. 9

2.—*Criminal Procedure Code* (1882), *ss.* 118 *and* 123—*Power of Sessions Judge to remand — Taking further evidence — Conditions and limitations imposed upon persons required to give security.*] Under s. 123 of the Criminal Procedure Code, a Sessions Judge is not competent to remand a case for further inquiry. Such evidence as he may require he must take himself. No conditions and limitations can be imposed upon persons ordered to give security under s. 118 of the Code. IN THE MATTER OF JHOJHA SINGH *v.* QUEEN-EMPRESS.

[24 Calc. 155

3.—*Criminal Procedure Code* (1882), *ss.* 110 *and* 117—*Transfer of criminal case—Criminal Procedure Code, s.* 526.] Where a Magistrate instituting proceedings against a person under s. 110 of the Code of Criminal Procedure has "acted" within the meaning of s. 117 of the Code, no order can be made subsequently under s. 526 of the Code transferring the case from his Court. IN THE MATTER OF THE PETITION OF GUDAR SINGH.

[19 All. 291

SENTENCE. *Col.*

1. General Cases ...1184
2. Imprisonment ...1184
(*a*) Imprisonment in Default of Fine ...1184
3. Sentence after Previous Conviction 1185

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[20 Bom. 145

See COMPENSATION—CRIMINAL CASES—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[21 Calc. 979
[22 Calc. 586
[18 All. 96
[19 All. 73

See JUDGMENT—CRIMINAL CASES.

[21 Calc. 121
[23 Calc. 502

See MAINTENANCE, ORDERS OF CRIMINAL COURT AS TO.

[22 Calc. 291
[20 Mad. 3
[25 Calc. 291

——, Alteration of.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[23 Calc. 975
[18 All. 301
[18 Bom. 751

SENTENCE—*continued.*

——, Enhancement of.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[18 All. 301
[18 Bom. 751
[24 Calc. 816, 817 note

See SESSIONS JUDGE, JURISDICTION OF.

[18 Bom. 751
[18 All. 301

(1) GENERAL CASES.

1.—*Discretion of Court as to punishment after conviction of murder.*] The law gives no discretion to a Court which convicts of an offence to award or not the punishment provided for that offence in the Penal Code. When convicting of murder, the only discretion which the law allows to the Court is to determine which of the two punishments prescribed should be awarded, regard being had to the circumstances of the particular case. DEWAN SINGH *v.* QUEEN-EMPRESS.

[22 Calc. 805

2.—*Sentence of penal servitude.*] The punishment of penal servitude is only applicable to Europeans and Americans. QUEEN-EMPRESS *v.* DUMA BAIDYA.

[19 Mad. 483

3.—*Sentence imposed in British India postponed till expiry of a sentence imposed in Mysore—Criminal Procedure Code* (1882), *s.* 11—*Power of Magistrate.*] It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of a sentence in Mysore. QUEEN-EMPRESS *v.* VENKATARAM JETTI.

[20 Mad. 444

(2) IMPRISONMENT.

(*a*) IMPRISONMENT IN DEFAULT OF FINE.

4.—*Bombay District Municipal Act* (*Bombay Act VI of* 1873), *s.* 84, *as amended by Bombay District Municipal Act* (*Bombay Act II of* 1884), *s.* 49—*Non-payment of taxes—Penal Code* (*XLV of* 1860), *s.* 40 *and s.* 64—*Penalty, "Fine"—Imprisonment in default of payment of penalty.*] There is no distinction between the word "penalty" as used in the Bombay District Municipal Act (Bombay Act VI of 1873), and the word "fine" as used in s. 64 of the Indian Penal Code (XLV of 1860). Imprisonment can therefore be awarded in default of any penalty inflicted under s. 84 of the Municipal Act as amended by Bombay Act II of 1884. IN RE LAKMIA.

[18 Bom. 400

5.—*Railways Act* (*IV of* 1890), *s.* 113—*Excess charge and fare, Non-payment of—Power of Magistrate to impose imprisonment in default—Fine.*] Section 113, sub-section (4) of the Indian Railway Act (IX of 1890), which directs that, on failure to pay on demand excess charge and fare when due, the amount shall on application be recovered

SENTENCE—*concluded.*

(2) IMPRISONMENT—*concluded.*

(*a*) IMPRISONMENT IN DEFAULT OF FINE—*concluded.*

by a Magistrate as if it were a fine, do not authorise the Magistrate to impose imprisonment in default. The excess charge and fare referred to in the section is not a fine, though it may be recovered as such. QUEEN-EMPRESS *v.* KUTRAPA.

[18 Bom. 440

6.—*Penal Code* (*Act XLV of* 1860), *ss.* 40 *and* 64 —*Madras Towns Nuisances Act* (*Madras Act III of* 1889), *ss.* 3 *and* 11 — *Magistrate, Jurisdiction of.*] Where a conviction has taken place under the Towns Nuisances Act (Madras), 1889, s. 3, a Magistrate has jurisdiction to impose a fine and also to pronounce a sentence of imprisonment in default of payment of the fine. QUEEN-EMPRESS *v.* RAPPEL.

[18 Mad. 490

7.—*Sentence, Powers of Appellate Court in respect of—Magistrate, Jurisdiction of—Criminal Procedure Code* (1882), *s.* 423 — *Enhancement of sentence.*] Where a District Magistrate acting as an Appellate Court in a criminal case altered a sentence of four months' rigorous imprisonment to one of three months' rigorous imprisonment, but imposed a fine of Rs. 10, or in default, a further term of six weeks' rigorous imprisonment:—*Held*, that as the latter sentence might involve an enhancement of the former, such sentence was in excess of the powers of the Magistrate having regard to s. 423 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* ISHRI.

[17 All. 67

(3) SENTENCE AFTER PREVIOUS CONVICTION.

8.—*Penal Code* (*Act XLV of* 1860), *ss.* 75, 457 *and* 511—*Attempt to commit house-breaking by night after previous conviction.*] Section 75 of Act XLV of 1860, does not apply to the case of an attempt to commit the offence punishable under s. 457 of the Code, after previous convictions of offences falling within Chap. XII or Chap. XVII, such offence being punishable under s. 511. *Sheo Saran Tato* v. *Empress*, I. L. R. 9 Calc. 877; *Empress of India* v. *Ram Dayal*, I. L. R. 3 All. 778; *Empress* v. *Nana Rahim*, I. L. R. 5 Bom. 140; and *Queen-Empress* v. *Sricharan Bauri*, I. L. R. 14 Calc. 357, referred to. QUEEN-EMPRESS *v.* AJUDHIA.

[17 All. 120

9.—*Penal Code* (*Act XLV of* 1860), *ss.* 75 *and* 511—*Attempt to commit an offence after previous conviction.*] Section 75 of the Penal Code does not apply to cases which are confined to s. 511 of that Code. The offences which come under s. 511 must be punished entirely irrespective of s. 75. *Queen-Empress* v. *Ajudhia*, I. L. R. 17 All. 120, approved. QUEEN-EMPRESS *v.* BHAROSA.

[17 All. 123

SERVICE TENURE.

See BOMBAY REVENUE JURISDICTION ACT, S. 4.

[18 Bom. 319

See HEREDITARY OFFICES ACT, S. 10.

[20 Bom. 423

See HEREDITARY OFFICES ACT, S. 13.

[19 Bom. 250

1.—*Watan — Mortgage of watan property—Adverse possession — Limitation — Succession to watan—Entry of watan in name of trespasser—Effect of Gordon Settlement effected with trespasser—Right of redemption.*] *B D* died in 1847, leaving his two widows, *K* and *R*. The plaintiff *P* was born to *R* in 1848, *i.e.*, the year after *B D's* death. *B D's watan* had been attached by Government in 1844, but in 1848 or 1849 Government restored a small portion of it, entering it in the name of *K* and refusing to recognise the infant *P*. In 1865 the Government restored the rest of the *watan*, again acknowledging *K* as the holder, the agreement with her being under "the Gordon Settlement." In 1865 *K* mortgaged two villages (part of the *watan*) to one *S* (father of the defendants), who was the *watani karkun*, for Rs. 9,900, which had been advanced by him to *K*, while the *watan* was under sequestration. Possession was given to *S*, and the village officers were directed to pay him the revenues. Subsequently *K* repented of her bargain, and directed the village officers not to pay the revenues to *S*. He accordingly brought a suit against her for the revenues of 1869-70, and obtained a decree in execution of which he sold the villages, and bought them at the sale. In 1878, however, the Collector cancelled the sale under the Watan Act (Bombay Act III of 1874). In 1873 *S* obtained a further decree against *K* for the revenue of two years (1870—72) and for possession as mortgagee. He got possession through the Court in 1875. *K* and *P*, who had been on good terms, quarrelled, and, on the 16th March, 1872, *K* adopted one *B* as a son to her deceased husband *B D*. In December, 1872, *P* sued *K* and *B*, praying that he might be declared the son of *B D*, and that the adoption of *B* might be cancelled. In 1879 the High Court held that *P* was the legitimate son of *B D*, and that *B's* adoption was invalid. The legitimacy of *P* being thus established, the Collector, in 1878, entered the *watan* in his name. At that time and until 1880 *P* and *S* were on friendly terms, the two having joint possession of the mortgaged villages, *P* being subsequently to October, 1878, the recognised occupant, and *S* taking some, if not all, of the revenues of the two villages. In 1880 *S* died, and his sons, the defendants, quarrelled with *P*, who in 1881 obtained an order from the Collector directing the village officers to pay the revenues of the two villages to him and not to the defendants. This order was subsequently set aside, and thereupon *P* in August 1887, filed the present suit to have the mortgage executed by *K* to *S* on the 15th September, 1865, declared null and void, and to recover possession of the two villages. In the alternative, he prayed

SERVICE TENURE—*continued.*

for redemption of the mortgage. The defendants pleaded (*inter alia*) that the villages were not *watan;* that they were entitled to the villages by reason of adverse possession; that the suit was barred by limitation; and that the plaintiff was estopped from disputing the mortgage, &c.:—*Held* (1), on the evidence, that the property in question was part of a *desai watan* and, as such, was held on service tenure. (2) That the property in question was subject to the rule which was in force in 1865 when the mortgage to *S* was executed, *viz.*, that alienation by way of mortgage of any portion of *watan* property had no force beyond the life of the *watandar* who mortgages it. (3) That the plaintiff having been declared to be the legitimate son of *B D* he was, from the date of his birth in 1848, the rightful *watandar*, and *K*, unless she was manager acting on his behalf, was a trespasser. The fact that Government had entered the *watan* in her name, and that the "Gordon Settlement" was effected with her, would not make her *watandar* as long as *B D's* son (the plaintiff) was alive. (4) That if *K* was a mere trespasser, then the plaintiff's right to recover the lands free from incumbrance, on the ground that he was the *watandar*, had been lost by limitation, and the property had become *K's* by adverse possession. The plaintiff, however, as her step-son, was her heir. The mortgage was proved and was binding on him as heir, and as such he had a right to redeem it. SWAMIRAO *v.* PADAPA BIN BHUJANGRAV.

[18 Bom. 22

2.—*Jagir granted to gorait or village watchman—Resumption by zemindar—Liability to ejectment—Notice to quit.*] A service tenure created for the performances of services, private or personal to the zemindar, may be resumed by the zemindar when the services are no longer required, or when the grantee of the tenure refuses to perform the services. The distinction between a grant of an estate burdened with a certain service, and an office the performance of the duties of which is remunerated by the use of certain lands pointed out. *Sannayasi* v. *Solur Zemindar*, I.L.R. 7 Mad. 268; *Hurrogobind Raha* v. *Ramrutno Dey*, I. L. R. 4 Calc. 67; *Sreesh Chunder Rae* v. *Madhub Mochee*, S. D. A. (1857), p. 1772; *Nilmony Sing Deo* v. *Government*, 18 W. R. 821; *Unide Rajaha Raje Bammarauze Bahadur* v. *Pemmasamy Venkatadry Naidoo*, 7 Moo. I. A. 128; *Forbes* v. *Meer Mahomed Takee*, 13 Moo. I. A. 438; *Lilanand Singh* v. *Munorunjun Singh*, 13 B. L. R. 124; L. R. I. A. Sup. Vol. 181; and *Mahadevi* v. *Vikrama*, I. L. R. 14 Mad. 365, referred to. In a suit for resumption of *jagir* lands granted by the zemindar to a *gorait* (village watchman), the lower Courts found that the grant was made in favour of the defendant's ancestor more than twelve years before suit, and descended from father to son who was allowed to retain possession without rendering services to the zemindar, and that the zemindar could not prove the terms of the grant:—*Held*, that the facts found did not legitimately lead to the inference drawn therefrom that the tenure was

SERVICE TENURE—*concluded.*

of a permanent character; but that the defendants could not be ejected without notice. RADHA PERSHAD SINGH *v.* BUDHU DASHAD.

[22 Calc. 938

3.—*Resumption of service grant.*] The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants on the ground that the villages had been granted on service tenure, and that he was entitled to resume them:—*Held*, on the evidence, that the plaintiff was not entitled to resume the villages. VIZIANAGRAM MAHARAJAH (MAHARAJAH OF VIZIANAGRAM) *v.* SITARAMARAZU.

[19 Mad. 100

SESSIONS JUDGE.

——, Commitment to.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[24 Calc. 429

SESSIONS JUDGE, DUTY OF.

See PLEADER — APPOINTMENT AND APPEARANCE.

[23 Calc. 493

See VERDICT OF JURY—GENERAL CASES.

[19 Bom. 735

—Obligation to form independent opinion on case—Opinion of committing Magistrate, Reference to, by Sessions Judge in his judgment.] On a case the decision of which is vested by law in him sitting with assessors, a Sessions Judge is bound to form his own opinion, aided by the assessors indeed, but quite independent of any expression of opinion on the part of the committing Magistrate. The Judge's reference in his judgment to the opinion of the committing Magistrate was held to be wholly irrelevant and wrong. DEWAN SING *v.* QUEEN-EMPRESS.

[22 Calc. 805

——, Trial by.

See CRIMINAL PROCEEDINGS.

[20 Mad. 445

SESSIONS JUDGE, JURISDICTION OF.

See COMMITMENT.

[23 Calc. 350

See CRIMINAL PROCEDURE CODE, S. 437.

[22 Calc. 573

See CRIMINAL PROCEEDINGS.

[17 All. 36

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[24 Calc. 395

SESSIONS JUDGE, JURISDICTION OF—*concluded.*

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

[23 Calc. 249, 250

See SECURITY FOR GOOD BEHAVIOUR.

[24 Calc. 155

1.—*Alteration of sentence in appeal—Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code* (1882), *s.* 423.] A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment. QUEEN-EMPRESS *v.* DANSANG DADA.

[18 Bom. 751

QUEEN-EMPRESS *v.* LACHMI KANT.

[18 All. 301

2.—*Conditional pardon to prisoner—Withdrawal of pardon and trial of person pardoned conditionally—Approver, Trial of, jointly with other accused—Power of Sessions Court to try person not committed—Criminal Procedure Code, s.* 193.] Two persons, *J* and *U*, were charged with the murder of *U's* husband, and in the course of the Police inquiry made certain statements to the Police. They were then sent up by the Police to a Deputy Magistrate for inquiry. *J* made three statements on the 28th of February, the 1st of March and the 9th of March, 1894, respectively, two of which were confessions, the third being a withdrawal of such confessions. *U* also made two statements on the 2nd and 9th of March, the first of which was a confession, and the second a withdrawal thereof. On the 27th of April, *U* was tendered a pardon, and was thereafter treated as an approver, in which capacity she gave evidence against *J*. *J* was then committed to the Court of Sessions to take his trial, *U* being sent up as an approver. In the Sessions Court *U* resiled from her deposition before the committing Magistrate, and was then and there treated as an accused person, and placed on her trial with the other accused, and the deposition aforesaid was put in as evidence. Both accused were convicted mainly on their confessions, *J* of murder, and *U* of abetment of murder:—*Held*, that the conviction of *U* was bad, the Court of Sessions having had no jurisdiction to try her as she was never committed to that Court by any competent Magistrate. QUEEN-EMPRESS *v.* JAGAT CHANDRA MALI.

[22 Calc. 50

SET-OFF. *Col.*

1. General Cases ... 1190
2. Cross Decrees ... 1190

See COMPENSATION—CIVIL CASES.

[18 Bom. 717

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—SET-OFF.

[21 Calc. 419

SET-OFF—*continued.*

(1) GENERAL CASES.

1.—*Civil Procedure Code* (1882), *s.* 111—*Counter-claim for damages—Costs of preparing a deed—Stamp duty.*] In December, 1892, the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants being unable to pay for it in accordance with that agreement entered into a supplementary agreement with the plaintiffs on the 10th August, 1894, whereby it was arranged that the plaintiffs should accept shares in the defendants' company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust in favour of trustees to be named by the plaintiffs for the purpose of securing the said debentures; such indenture to be prepared by the plaintiffs' solicitors together with the debentures, at the expense of the company, and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of and supplemental to the agreement of December, 1892. This agreement was signed by J. Marshall on behalf of the plaintiffs. The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors. The plaintiffs having paid the solicitor's bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894. The defendants alleged that the plaintiffs had failed to carry out their part of the agreement of 1892, and contended that they were entitled in this suit to claim damages against the plaintiffs and to set them off against the plaintiffs' claim:—*Held*, that the defendants should not be permitted in this suit to claim damages against the plaintiffs for their alleged failure to carry out their part of the contract of 1892. Their counter-claim or set-off did not fall under s. 111 of the Civil Procedure Code (Act XIV of 1882), as it was not a claim for an ascertained sum of money, and, that being so, they could not claim as of right to have it investigated in this suit. Nor was there any equitable ground for admitting the counter-claim, as it could not be doubted that there would be considerable delay in investigating it, and there was no reason why the plaintiffs should have to wait so long for the money to which they were now legally entitled:—*Held*, also, that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust-deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. DOBSON AND BARLOW *v.* BENGAL SPINNING AND WEAVING CO.

[21 Bom. 126

(2) CROSS DECREES.

2.—*Civil Procedure Code* (1889), *s.* 247—*Cross-claims under the same decree—Costs under the same decree recoverable in different ways.*] Section 247 of the Code of Civil Procedure is not limited in its application to cases in which the remedy of each party against the other is of precisely the

SET-OFF—*concluded.*

(2) CROSS DECREES—*concluded.*

same nature. Thus, where one party to a suit was entitled to recover certain costs by means of the sale of hypothecated property, and the other party under the same decree was entitled to recover a smaller sum as costs from his opponent personally, it was *held* that s. 247 of the Code applied, and that the costs recoverable personally could be set off against the costs recoverable by sale of the hypothecated property. *Kalka Prasad* v. *Ram Din*, I. L. R. 5 All. 272, dissented from. BHAGWAN SINGH *v.* RATAN.

[16 All. 395

SETTLEMENT.

See DEED—CONSTRUCTION.

[20 Bom. 310

See STAMP ACT, SCH. I, ART. 57.

[20 Bom. 210

—— of lands.

See VILLAGE CHOWKIDARS ACT, S. 48.

[21 Calc. 626

——, Post-nuptial.

See TRANSFER OF PROPERTY ACT, S. 53.

[22 Calc. 185

——, Right to obtain.

See ASSAM LAND AND REVENUE REGULATION, S. 154.

[24 Calc. 239

——, Time of.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.

[24 Calc. 887

SETTLEMENT OFFICER.

See BENGAL TENANCY ACT, S. 101.

[21 Calc. 378

See BENGAL TENANCY ACT, S. 102.

[21 Calc. 38

[22 Calc. 244

See MADRAS FOREST ACT, S. 4.

[17 Mad. 193

See PENSIONS ACT, S. 4.

[17 Mad. 193

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[23 Calc. 257

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

[21 Calc. 935

——, Act or order of.

See BENGAL TENANCY ACT, S. 104.

[23 Calc. 257

SETTLEMENT OFFICER—*concluded.*

See KHOTI SETTLEMENT ACT, SS. 20 AND 21.

[18 Bom. 244

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.

[16 All. 209

See LIMITATION ACT, ART. 14.

[18 Bom. 244

——, Decision of.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N.-W. P. LAND REVENUE ACT.

[18 All. 172

See KHOTI SETTLEMENT ACT, S. 17.

[21 Bom. 244, 608

——, Entry in record of.

See CASES UNDER KHOTI SETTLEMENT ACT, S. 17.

——, Order of Special Judge on appeal from.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776, 935

[22 Calc. 477

[24 Calc. 462

——, Statement of facts by.

See EVIDENCE ACT, S. 35.

[21 Bom. 695

SHAREHOLDERS.

——, Liability of.

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

[18 Bom. 152

[20 Bom. 654

——, Rights of.

See COMPANY—RIGHTS OF SHAREHOLDERS.

[19 Bom. 1

[L. R. 21 I. A. 139

SHARES, CANCELLATION OF.

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.

[20 Bom. 654

SHIP.

—— at anchor, Duty of.

See SHIPPING LAW—COLLISION.

[24 Calc. 627

SHIP—*concluded.*

——, Seaworthiness of.

See BILL OF LADING.

[19 Bom. 639

SHIPMENT.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[18 Mad. 63

See SMALL CAUSE COURT PRESIDENCY TOWNS — JURISDICTION — DAMAGES FOR BREACH OF CONTRACT.

[19 Mad. 304

SHIPPING LAW.

—Collision—Damage by ship under way colliding with another at anchor — Burden of justifying—Duty of ship at anchor.] Where a ship under way comes into collision with another at anchor in a proper place, and showing, at night, an anchor light, it is obvious that the burden of justifying is heavily cast on the ship under way. At the same time there is an obligation on the anchored ship to keep a competent watch, to show an anchor light, and to do everything to avert a collision and lessen the damage from it. If, as was the case here, the damaged ship is placed in a difficulty entirely by the erroneous course or conduct of the other, and is obliged to take a step on the instant, she is entitled to claim from a Court a favourable consideration for her action, even if that should afterwards appear not to have been the best possible. A steamship, entering the fairway of a river with the tide flowing, collided with the promovent's tug at anchor in a proper place, and showing an anchor light. Near the tug was a pilot brig, astern of which the steamship wanted to round, attempting to pass between the tug and the brig. She could, however, have taken a course astern of both. At the approach of the steamship both the anchored vessels, heading against the tide, hove on their anchors, and drifted back. The justification set up by the owners of the steamship was that she was misled by the pilot brig's drifting, the anchor light of the latter having been kept up. Blame to a third ship, if blame there were, was held to be no excuse for the colliding ship, as against the tug's complaint. The main charge against the tug was that she did not slack away chain as soon as there was danger, but hove on her anchor. It was found, however, that if the tug were already drifting when the collision took place, there was no reason to suppose that by slacking away chain at the earliest possible moment the collision would have been averted, or lessened in force. On the other hand, the facts against the impugnants' steamship were: (1) that her course could, without difficulty, have been directed so, that, by going astern of the tug from the port side instead of crossing her bows, all risk of collision would have been avoided; (2) that there was a want of sufficient look-out on board the steamship, especially as regarded the tug; (3) that there was possibly also a miscalculation on the part of the steamship of the room to pass, with

SHIPPING LAW—*concluded.*

reference to the force and set of the tide. She was, accordingly, alone held to blame, and her owners liable in damages. MARY TUG CO. *v.* BRITISH INDIA STEAM NAVIGATION CO.

[24 Calc. 627
[L. R. 24 I. A. 129

SIGNATURE.

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.

[18 Bom. 586

See MORTGAGE — FORECLOSURE — DEMAND AND NOTICE OF FORECLOSURE.

[16 All. 59

—— of Judge.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &C.

[23 Calc. 480

—— of Magistrate, Warrant without.

See PENAL CODE, S. 186.

[23 Calc. 896

SMALL CAUSE COURT, MOFUSSIL.

		Col.
1.	Jurisdiction	...1194
	(*a*) General Cases	...1194
	(*b*) Compensation for Acquisition of Land	...1195
	(*c*) Contribution, Suits for	...1195
	(*d*) Crops	...1195
	(*e*) Damages	...1196
	(*f*) Government, Suits against	...1196
	(*g*) Immoveable Property	...1196
	(*h*) Maintenance	...1197
	(*i*) Municipal Tax	...1197
	(*j*) Partnership Account	...1197
	(*k*) Trusts ...	...1197
2.	Practice and Procedure	...1198

See RES JUDICATA—COMPETENT COURT —SMALL CAUSE COURT CASES.

[17 Mad. 168 (179)
[18 Mad. 189

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[19 Bom. 127
[16 All. 11

See CASES UNDER SPECIAL OR SECOND APPEAL — SMALL CAUSE COURT SUITS.

(1) JURISDICTION.

(*a*) GENERAL CASES.

1.—*Suit not cognizable against some of the defendants.*] A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants. PARSHOTAM LAKHMIRAM *v.* PEMA HARJI.

[21 Bom. 121

SMALL CAUSE COURT, MOFUSSIL —*continued.*

(1) JURISDICTION—*continued.*

(*a*) GENERAL CASES—*concluded.*

2.—*Suit for profits of land—Prayer for account—Question of title.*] The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKAR *v.* BALAJI BAPUJI.

[21 Bom. 248

(*b*) COMPENSATION FOR ACQUISITION OF LAND.

3.—*Provincial Small Cause Courts Act* (*IX of* 1889), *Sch. II, Arts.* 11 *and* 14—*Claim for compensation awarded under Land Acquisition Act—Interpleader suit—Civil Procedure Code* (1882), *ss.* 470 *and* 622—*Jurisdiction of Munsif—Superintendence of High Court.*] Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at Rs. 468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under s. 622, Civil Procedure Code:—*Held*, that the interpleader suit was not within the jurisdiction of a Provincial Small Cause Court, and was rightly brought on the ordinary side of the District Munsif's Court, and consequently where the petitioner's remedy was by way of second appeal the petition for revision was not admissible. TIRUPATI RAJU *v.* VISSAM RAJU.

[20 Mad. 155

(*c*) CONTRIBUTION, SUITS FOR.

4.—*Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. II, cl.* 41.] Clause 41, Sch. II of the Provincial Small Cause Courts Act (IX of 1887) excludes a suit for contribution from the jurisdiction of the Small Cause Court, and restores the law laid down in *Rambux Chittangeo* v. *Modhoosoodun Paul Chowdhry*, B. L. R. Sup. Vol. 675; 7 W. R. 377. BHATOO SINGH *v.* RAMOO MAHTON.

[23 Calc. 189

(*d*) CROPS.

5.—*Act XI of* 1865, *s.* 6—*Suit to establish right to crops on basis of title to land on which they are grown—Question of title.*] A suit to establish the plaintiff's right to a standing crop on the basis of his title to the land is an ordinary civil suit, and not a suit of a Small Cause Court nature. *Godha* v. *Naik Ram*, I. L. R. 7 All. 152; and *Shiboo Narain Singh* v. *Madden Ally*, I. L. R. 7 Calc. 608, relied on. DAKHYANI DEBEA *v.* DOLEGOBIND CHOWDHRY.

[21 Calc. 430

SMALL CAUSE COURT, MOFUSSIL —*continued.*

(1) JURISDICTION—*continued.*

(*e*) DAMAGES.

6.—*Suit for damages for obstruction of water-course—Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. II, cl.* 35 (*i*)—"*Diversion*," *Meaning of.*] If by obstruction the flow of water is diverted from a plaintiff's lands, such obstruction amounts to "diversion" within the meaning of cl. 35 (*i*) of Sch. II of Act IX of 1887, and a suit for damages for such obstruction will not lie in the Small Cause Court. PERIAKARUPPAN *v.* PALANIYANDI.

[18 Mad. 28

7.—*Suit for damages for injury caused by diversion of water-course—Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. II, cl.* 35 (*i*).] A suit to recover damages for injury to a wall caused by the diversion of a water-course is cognizable by a Provincial Small Cause Court. Such a suit does not fall within the exception of Art. 35 (*i*) of Sch. II to Act IX of 1857. IN RE HAUSAMBHAI ABDULABHAI.

[20 Bom. 283

8.—*Suit for compensation for use and occupation of land valued at less than Rs.* 500—*Provincial Small Cause Courts Act* (*IX of* 1887), *ss.* 15 *and* 23, *Sch. II, Art.* 8.] A suit for compensation for money realised by the defendants from the actual occupants of land, who were stated to have been the plaintiff's tenants, is a suit, not for rent, but for damages of a nature cognizable by the Small Cause Court; therefore, no second appeal lies to the High Court in such a suit valued at less than Rs. 500, notwithstanding that the plaint was returned by the Small Cause Court to be filed in the Civil Court under s. 23 of the Provincial Small Cause Courts Act, on the ground that the suit involved a question of title. *Mohesh Mahto* v. *Piru*, I. L. R. 2 Calc. 470; and *Muttukaruppan* v. *Sellan*, I. L. R. 15 Mad. 98, referred to. KALI KRISHNA TAGORE *v.* IZZATANNISSA KHATUN.

[24 Calc. 557

(*f*) GOVERNMENT, SUITS AGAINST.

9.—*Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. II, Art.* 3—*Karnam in a zemindari—Officer of Government—Public servant.*] The plaintiffs, being the lessees of a settled zemindari, brought a suit in a Small Cause Court against a *karnam* in the zemindari to recover damages sustained by reason of the defendant's default in keeping certain accounts, &c.:—*Held*, that the *karnam* was not an officer of Government, and that the suit was maintainable under the Provincial Small Cause Courts Act. ORR *v.* NEELAMEGAM PILLAI.

[18 Mad. 395

(*g*) IMMOVEABLE PROPERTY.

10.—*Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. II, Arts.* 4 *and* 13—*Hereditary allowance—Bombay General Clauses Act* (*Bombay Act III of* 1886.)] Plaintiffs sued in the Court

SMALL CAUSE COURT, MOFUSSIL —*continued.*

(1) JURISDICTION—*continued.*

(*g*) IMMOVEABLE PROPERTY—*concluded.*

of Small Causes at Poona to recover Rs. 400 for arrears alleged to be payable to them under an agreement by the defendant's father to pay Rs. 150 per annum, of which Rs. 50 were for maintenance of plaintiff's mother and the residue was to be applied towards defraying the expenses of a temple. The terms of the agreement showed that it was intended that the payment for the expenses of the temple should be continued in perpetuity. The Judge dismissed the suit, holding that being for a hereditary allowance it was a claim for immoveable property and came under cls. (4) and (13) of Sch. II of the Provincial Small Cause Courts Act (IX of 1887). On application by the plaintiffs to the High Court under s. 25 of the Provincial Small Cause Courts Act (IX of 1887), *held*, reversing the decree, that the suit was not for possession of immoveable property or recovery of an interest in such property within the meaning of Art. 4, nor did it come within the purview of Art. 13 of Sch. II of the Act. The Small Cause Court had therefore jurisdiction to entertain the suit. VISHNU GANESH JOSHI *v.* YESHAVANTRAO.

[21 Bom. 387

(*h*) MAINTENANCE.

11.—*Suit for arrears of maintenance—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 38.*] A suit for arrears of maintenance payable under a written agreement does not lie in a Provincial Small Cause Court. SAMINATHA AYYAN *v.* MANGALATHAMMAL.

[20 Mad. 29

(*i*) MUNICIPAL TAX.

12.—*Provincial Small Cause Courts Act (IX of 1887), Sch. II, Arts. 8 and 13—Calcutta Municipal Consolidation Act (Bengal Act II of (1888), ss. 117 and 119—Suit to recover occupier's share of tax by the owner of a bustee.*] A suit by the proprietor of *bustee* land for the recovery of Municipal taxes from the owner of a hut in the *bustee* is cognizable by the Provincial Small Cause Courts. BROJONATH MITTRA *v.* GOPI SHAKRANI.

[23 Calc. 835

(*j*) PARTNERSHIP ACCOUNT.

13.—*Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 28 (c)—Suit by a retired partner for the consideration due on account of his retirement.*] A suit by a retired partner for money alleged to have been agreed to be paid to him by the continuing partners in consideration of his retirement, is not a suit for balance of a partnership, and is not excluded from the jurisdiction of a Court of Small Causes. FAUJI LAL *v.* CHANGA MAL.

[19 All. 513

(*k*) TRUSTS.

14.—*Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 18—Gift, Construction of—*

SMALL CAUSE COURT, MOFUSSIL —*concluded.*

(1) JURISDICTION—*concluded.*

(*k*) TRUSTS—*concluded.*

Hindu law—Suit relating to a trust.] A Hindu executed in favour of his daughter an instrument in the following terms: "I have hereby given to you to be enjoyed as *stridhanam* after my death 2,320 *fanams* out of 6,000 *fanams* which remain as *kanom* on the land T. . . . The proportionate rent on 2,320 *fanams* is 365 *paras*. This quantity of paddy . . . . shall be enjoyed by you and your sons and grandsons hereditarily by receiving the same from my sons." After certain clauses restricting the mode of enjoyment and the power of alienation the instrument proceeded, "in the event of the said *kanom* being paid, that money shall be received by my sons, and shall be invested in some other property, which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same." In a suit by a grandson of the donee to recover his share of the income:—*Held*, that the suit "related to a trust" within the meaning of the Provincial Small Cause Courts Act, Sch. II, Art. 18. KRISHNA AYYAN *v.* VYTHIANATHA AYYAN.

[18 Mad. 252

(2) PRACTICE AND PROCEDURE.

15.—*Presentation of plaint—Former order returning plaint—Provincial Small Cause Courts Act (IX of 1887), ss. 23 and 27.*] Where a plaint in a suit for damages was presented to a Judge of a Small Cause Court, and it was found that it had formerly been presented to his predecessor who was of opinion that the Court had no jurisdiction to try the suit and returned the plaint to the plaintiff under s. 23 of Act IX of 1887:—*Held*, that the order returning the plaint being final under s. 27 of the Act, the Judge could not admit and register the plaint until that order had been set aside. IN RE HAUSAMBHAI ABDULABHAI.

[20 Bom. 283

SMALL CAUSE COURT, PRESIDENCY TOWNS.

Col.

1. Jurisdiction ...1199
   - (*a*) Damages for Breach of Contract ...1199
   - (*b*) Recovery of Immoveable Property ...1199
   - (*c*) Set-off ...1199
2. Practice and Procedure ...1200
   - (*a*) Leave to Sue ...1200
   - (*b*) Altering, Setting aside, or Reversing Decree ...1200
   - (*c*) New Trials ...1201
   - (*d*) Reference to High Court ...1202

——, Practice and procedure of.

See CIVIL PROCEDURE CODE, S. 108.

[21 Calc. 269

[20 Bom. 380

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

(1) JURISDICTION.

(*a*) DAMAGES FOR BREACH OF CONTRACT.

1.—*Contract for shipment and delivery of goods—Divisible contracts—Construction of contract—Separate suits.*] Where a contract provided for delivery of goods in two monthly shipments and the defendants refused to take delivery or pay for either of the shipments of the goods in accordance therewith; and it appeared that the total amount of the damages sustained by reason of the two breaches alleged, if added together, exceeded Rs. 2,000, whereas, if taken separately, they were less than that amount:—*Held*, that on the true construction of the contract, the plaintiff was entitled to bring two separate suits for the damages sustained in respect of each shipment, and that therefore the Presidency Small Cause Court had jurisdiction. VOLKART *v.* SABJU SAHEB.

[19 Mad. 304

(*b*) RECOVERY OF IMMOVEABLE PROPERTY.

2.—*Presidency Town Small Cause Courts Act (XV of 1882), ss. 22 and 41—Landlord and tenant—Suit to eject tenant—Tender and payment into Court—Transfer of Property Act (IV of 1882), s. 114—Costs.*] The plaintiff, a landlord, relying on a provision in a lease, gave the defendants, his tenants, notice to quit. Within seven days the defendants tendered rent, interest, and costs. The plaintiff, nevertheless, filed this suit to eject the defendants. The defendants subsequently paid the full amount due into Court:—*Held*, that, under the terms of the lease, the defendants were not liable to forfeiture, and that, since the suit should have been brought under Chap. VII, s. 41 of the Presidency Small Cause Courts Act, the plaintiff must pay the defendants' costs as between attorney and client under s. 22 of that Act:—*Held*, on appeal (1) that there having been a tender and payment into Court of the full amount due, the plaintiff proceeded with the suit at his risk under s. 114 of the Transfer of Property Act; (2) that the suit not being cognizable by the Small Cause Court, s. 22 of Act XV of 1882 did not apply, an application under Chap. VII of that Act not being a suit under s. 22 thereof. KRISHNASAMI CHETTI *v.* NATAL EMIGRATION BOARD.

[17 Mad. 216

(*c*) SET-OFF.

3.—*Presidency Towns Small Cause Courts Act (XV of 1882), s. 18, expl. 1—"Admitted set-off"—Debt—Civil Procedure Code (1882), s. 111.*] The plaintiffs sued in the Calcutta Court of Small Causes for breach of contract, the damages for which breach amounted to Rs. 2,148, but they deducted from this sum of Rs. 2,148, by way of set-off, a sum of Rs. 500 which was due by them to the defendant on account of an entirely different transaction, thereby reducing their claim to Rs. 1,648. The defendant admitted that the Rs. 500 was due to him by the plaintiffs, but did not, either before suit or at the trial, agree

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

(1) JURISDICTION—*concluded.*

(*c*) SET-OFF—*concluded.*

to its being set-off against the plaintiffs' claim:—*Held*, by MACPHERSON and TREVELYAN, JJ. (PETHERAM, C.J., dissenting), that the sum of Rs. 500 could not, under expl. 1 of s. 18 of Act XV of 1882, be set-off, and that the suit must be dismissed as being beyond the jurisdiction of the Court. RAMDEO *v.* POKHIRAM.

[21 Calc. 419

(2) PRACTICE AND PROCEDURE.

(*a*) LEAVE TO SUE.

4.—*Practice as to granting leave to sue person out of jurisdiction—Power of High Court to make rules as to Small Cause Court—Statute 24 and 25 Vict. cap. 104, s. 15—Civil Procedure Code (1882), s. 652—Presidency Towns Small Cause Courts Act (XV of 1882), ss. 6, 18, cls. (a) and (c), 33.*] In 1885 the High Court made a rule under the Presidency Small Cause Courts Act, s. 33, whereby it was declared that the granting leave to sue a defendant out of the jurisdiction under s. 18, cls. (*a*) and (*c*) of that Act, was a non-judicial or *quasi*-judicial act within the meaning of that section, and might be done by the Registrar of the Court of Small Causes, Madras:—*Held*, that the rule was *ultra vires* and void. RAJAM CHETTI *v.* SESHAYYA.

[18 Mad. 236

(*b*) ALTERING, SETTING ASIDE, OR REVERSING DECREE.

5.—*Presidency Towns Small Cause Courts Act (XV of 1882), s. 37—Powers of Full Bench of Presidency Small Cause Court—Reversal of decree on question of fact.*] One of the Judges of the Presidency Small Cause Court in a suit tried by him delivered judgment for the plaintiff. The defendant made an application to the Full Bench under the Presidency Small Cause Courts Act, s. 37, and the Court arrived at the conclusion that the judgment proceeded on a misappreciation of the evidence and reversed the decree:—*Held*, by COLLINS, C.J., and SHEPHARD, J. (BEST, J., dissenting), that the Full Bench of the Presidency Small Cause Court had transgressed the limits of the jurisdiction conferred by Act XV of 1882 s. 37, as the case was one on which different minds might not unreasonably have come to different conclusions. SADASOOK GAMBIR CHAND *v.* KANNAYYA.

[19 Mad. 96

6.—*Presidency Towns Small Cause Courts Act (I of 1895), ss. 37 and 38—New trial—Powers of Bench sitting on application for new trial—Ground for new trial—Question of evidence.*] The Fourth Judge of the Presidency Small Cause Court, in a suit tried by him, delivered judgment for the plaintiff. The defendant applied under s. 38 of the Presidency Small Cause Courts Act (I of 1895) for a new trial, and the Judges (the First and Fourth) on such application set aside the judgment, and

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

(2) PRACTICE AND PROCEDURE—*continued.*

(*b*) ALTERING, SETTING ASIDE, OR REVERSING DECREE—*concluded.*

dismissed the plaintiff's suit with costs, and on the plaintiff's application, the Full Bench of the Small Cause Court refused to interfere:—*Held*, by the High Court that the Judges exercised the powers of an Appellate Court in setting aside the original decree, and exceeded the jurisdiction vested in them by s. 38 of the Act, such jurisdiction being a revisional jurisdiction only:—*Held*, also, that, where the question is one of evidence, the judgment of the original Court could be reversed, and a new trial directed only when such judgment is manifestly against the weight of evidence. *Sadasook Gambir Chand* v. *Kannayya*, I. L. R. 19 Mad. 96, followed. SASSOON *v.* HURRY DAS BHUKUT.

[24 Calc. 455

(*c*) NEW TRIALS.

7.—*Second application for new trial—Presidency Towns Small Cause Courts Act (XV of 1882), s. 37—Act IX of 1850, s. 53.*] The Judges of the Calcutta Small Cause Court have power to entertain in the same suit more than one application for a new trial. There is nothing in s. 37 of Act XV of 1882 prohibiting such a practice. It is in accordance with the practice of Courts in England to allow such applications. *Pursonchund Golicha* v. *Kanooram*, 10 B. L. R. 355; 19 W. R. 203, followed. SURRUT COOMARI DASSEE *v.* RADHA MOHUN ROY.

[22 Calc. 784

8.—*Presidency Towns Small Cause Courts Acts (XV of 1882) (amended by I of 1895), Chap. VI, ss. 69 and 70—Jurisdiction—Application for new trial.*] Where the plaintiff requested the Chief Judge of the Presidency Small Cause Court to deliver his judgment contingent upon the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), but subsequently abandoned the exercise of such right before the question to be referred was formulated or a reference made:—*Held*, that the plaintiff was not thereby deprived of his remedies under Chap. VI of the Act, and could still make an application for a new trial:—*Held*, also, that the meaning of s. 70 is that, in failing to give security, the party shall be deemed to have submitted to the judgment as final and conclusive within the meaning of s. 37 of Act I of 1895; that is to say, the judgment becomes final and conclusive, save as provided by Chap. VI of Act XV of 1882:—*Held*, therefore, that the Small Cause Court had jurisdiction to entertain the application by the plaintiff for a new trial. PROTAP CHUNDER SEN *v.* TUNSOOK DASS.

[23 Calc. 967

9.—*Ground for new trial—Question of evidence.*] Where the question is one of evidence, the judgment of the original Court can be reversed, and new trial directed only when such judgment is manifestly against the weight of evidence. *Sadasook Gambir Chand* v. *Kannayya*, I. L. R. 19 Mad. 96, followed. SASSOON *v.* HURRY DAS BHUKUT.

[24 Calc. 455

SMALL CAUSE COURT, PRESIDENCY TOWNS—*concluded.*

(2) PRACTICE AND PROCEDURE—*concluded.*

(*c*) NEW TRIALS—*concluded.*

(*d*) REFERENCE TO HIGH COURT.

10.—*Presidency Town Small Cause Courts Act (XV of 1882), s. 69—Duty of the Judge in stating a case for opinion of the High Court—Question of law — Condition precedent to referring case.*] Under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), the existence of such a question of law or usage or construction as therein mentioned, is a condition precedent to a reference to the High Court, and if no such question arises, the Small Cause Court has no authority to refer, and the High Court no jurisdiction to deal with, the reference. The duty of drawing up the case, where a reference is made, is imposed on the Court, and it is responsible for the form of the case. ISHWARDAS TRIBHOVANDAS *v.* KALIDAS BHAIDAS.

[20 Bom. 779

11.—*Presidency Town Small Cause Courts Act (XV of 1882), ss. 37, 38 and 69—Stating case on application for a new trial.*] When, upon an application to the Presidency Small Cause Court for a new trial, the Judges differ in their opinion as to any question of law, and the majority without ordering a new trial reverse the decree of the Judge who tried the suit, the Court is bound to state a case for the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act. SESHAMMAL *v.* MUNUSAMI MUDALI.

[20 Mad. 358

12.—*Judgment contingent upon opinion of the High Court—Presidency Small Cause Courts Act (XV of 1882), s. 69—Civil Procedure Code (1882), ss. 373, 617, 618 and 619 — Withdrawal of suit, Power to allow.*] The Small Cause Court passed a decree for the plaintiff, but contingent upon the opinion of the High Court. On the reference the High Court decided that, upon the plaint before the Court, the plaintiffs could not recover:—*Held*, that the Small Cause Court on the receipt of the copy of the judgment of the High Court was bound to enter judgment for the defendants. YULE & Co. *v.* MAHOMED HOSSAIN.

[24 Calc. 129

SOCIETY UNINCORPORATED, SUIT BY AGENT OF.

See PLAINT—VERIFICATION AND SIGNATURE.

[16 All. 420

SOLICITOR.

See PRIVILEGED COMMUNICATION.

[18 Bom. 263

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872).

——, ss. 11 and 25.—*"Proprietor," Meaning of—Suit for establishment of lakhiraj title and amendment of record of rights—Jurisdiction of Civil Court—Onus of proof.*] In proceedings for settlement of rent and record of rights under the Sonthal Pergunnahs Settlement Regulation (III of 1872), certain lands claimed by the plaintiffs as *lakhiraj* were ordered to be recorded as *mal* and assessed with rent, the Commissioner of the Division stating that the plaintiffs might, if they chose, bring a suit in the Civil Court. The defendant (zemindar) obtained an *ex-parte* decree for rent on the basis of the *jummabandi* prepared in the said proceedings. In a suit brought to establish the plaintiffs' *lakhiraj* title and for an order directing the record of rights and *jummabandi* to be amended:—*Held*, that a *lakhirajdar* is a "proprietor" within the meaning of s. 25 of the Regulation, and ss. 11 and 25 did not bar the jurisdiction of the Civil Court in this case. *Ram Charan Singh* v. *Dhaturi Singh*, I. L. R. 18 Calc. 146, distinguished:—*Held*, also, that in the present case the onus was on the plaintiffs to prove their alleged *lakhiraj* title. RAMRANJAN CHUCKERBUTTY v. NANDA LAL LAIK.

[22 Calc. 473

SPECIAL OR SECOND APPEAL.

		Col.
1.	Orders Subject or not to Appeal	...1203
2.	Small Cause Court Suits	.. 1207
	(*a*) General Cases	...1207
	(*b*) Damages	...1208
	(*c*) Immoveable Property	...1208
	(*d*) Mesne Profits	.. 1209
	(*e*) Profits of Land	...1209
	(*f*) Tax	...1209
3.	Grounds of Appeal	...1210
	(*a*) Evidence, Mode of Dealing with	...1210
	(*b*) Questions of Fact	...1211
4.	Other Errors of Law or Procedure	...1212
	(*a*) Appeals	...1212
	(*b*) Local Investigation	...1213
5.	Procedure in Special Appeal	...1213

See REVIEW—GROUND FOR REVIEW.

[18 Mad. 480

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[22 Calc. 179

——, Power of Court in.

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

[19 Mad. 151

(1) ORDERS SUBJECT OR NOT TO APPEAL.

1.—*Bengal Tenancy Act, Chap. X, ss.* 104, *cls.* 2, 106, 107 *and* 108, *cl.* 2—*Dispute as to entries in record of rights—Question as to status of ryots—Order of Special Judge on appeal from Settlement Officer—Civil Procedure Code, s.* 622.] Under Chap. X of the Bengal Tenancy Act there

SPECIAL OR SECOND APPEAL—*continued.*

(1) ORDERS SUBJECT OR NOT TO APPEAL—*continued.*

is to be (1) a framing of the record of rights; (2) a draft publication for a period of one month during which time objections may be preferred; and (3) a final publication, previous to which publication "disputes" as to the correctness of the entries in the record of rights, other than entries of rents settled, are to be heard and decided. Under s. 107 the decisions of the Settlement Officer in all proceedings under the chapter are to have the force of decrees, and under s. 108, cl. 2, an appeal lies to the Special Judge from all decisions of the Settlement Officer; but it is only in cases under s. 106 decided by the Special Judge on appeal from the Settlement Officer, that a second appeal lies to the High Court, and such cases can only relate to disputes regarding the correctness of entries other than the entries of rent settled. Where a decision of the Settlement Officer in a case under s. 104, cl. 2 of the Act dealt with the question of the status of the ryots, and was passed before the record had been framed; and after the record had been framed, there was no dispute as to the correctness of any entry, except the entries of the rent settled:—*Held*, that the order of the Special Judge on appeal from such decision of the Settlement Officer was not one passed in a case under s. 106, and therefore no second appeal lay from it to the High Court. *Shewbarat Koer* v. *Nirpat Roy*, I. L. R. 16 Calc. 596; and *Lala Kirat Narain* v. *Palakdhari Pandey*, I. L. R. 17 Calc. 326, referred to:—*Held*, also, that the case was not one which required the interference of the High Court under s. 622 of the Civil Procedure Code. GOPI NATH MASANT *v.* ADOITA NAIK.

[21 Calc. 776

2.—*Bengal Tenancy Act (VIII of* 1885), *ss.* 106 *and* 108—*Special Judge, Order of—Boundary dispute—Bengal Survey Act (Bengal Act V of* (1875), *Part V, s.* 40—*Settlement Officer acting as Survey Officer.*] A second appeal only lies to the High Court under s. 108 of the Bengal Tenancy Act from the decision of the Special Judge in a case under s. 106 of the Act. No second appeal therefore lies from an order of the Special Judge dismissing an appeal on the ground that no appeal lay to him in a case of a boundary dispute which had been tried and decided by a Settlement Officer acting as a Survey Officer under Part V of the Bengal Survey Act (Bengal Act V of 1875). IRSHAD ALI CHOWDHRY *v.* KANTA PERSHAD HAZAREE.

[21 Calc. 935

3.—*Bengal Tenancy Act (VIII of* 1885), *Chap. X, ss.* 106 *and* 108—*Record of rights, Dispute prior to the preparation of—Standard of measurement, Question of.*] In a proceeding under Chap. X of the Bengal Tenancy Act, a dispute arose between the parties, before the preparation of the record of rights, on the question of the local standard of measurement. The Settlement Officer decided the case in favour of the plaintiffs,

SPECIAL OR SECOND APPEAL— *—continued.*

(1) ORDERS SUBJECT OR NOT TO APPEAL *—continued.*

and, on appeal to the Special Judge, the decision was upheld:—*Held*, that the order of the Settlement Officers was not one under s. 106 of the Bengal Tenancy Act, and under cl. 3 of s. 108, no second appeal lay to the High Court. *Gopinath Masant* v. *Adoita Naik*, I. L. R. 21 Calc. 776, referred to. ANAND LAL PARIA *v.* SHIB CHUNDER MUKERJEE.

[22 Calc. 477

4.—*Special Judge, Decision of—Revenue Officer, Decision of—Bengal Tenancy Act (VIII of* 1885), *ss.* 105, 106 *and* 108 (3)—*Record of rights, Dispute prior to completion of—Dispute about proposed entry or omission in the record.*] The respondent, in the course of proceedings for the record of rights in the village, of which he was the landlord, applied for the settlement of fair rents The appellant claimed to be a ryot holding at a fixed rent. The respondent denied the validity of the claim. This dispute gave rise to a case between them which was decided by the Revenue Officer against the appellant, who then appealed to the Special Judge, with the result that the decision on that question was confirmed. At the time of the Revenue Officer's decision no record of rights had been completed under s. 105 (1) of the Bengal Tenancy Act. On appeal to the High Court the respondent took the preliminary objection that no appeal lay under s. 108 (3), as the case was not one under s. 106:—*Held*, that the decision of the Revenue Officer was a decision in a proceeding under s. 106 of the Bengal Tenancy Act, and that a second appeal lay from the decision of the Special Judge to the High Court. *Gopi Nath Masant* v. *Adoita Naik*, I. L. R. 21 Calc. 776; and *Anand Lal Paria* v. *Shib Chunder Mukerjee*, I. L. R. 22 Calc. 477; so far as they decide that a second appeal would not lie in such a case, overruled. DENGU KAZI *v.* NOBIN KISSORI CHOWDHRANI.

[24 Calc. 462

5.—*Order setting aside sale—Civil Procedure Code* (1882), *ss.* 312 *and* 622—*Superintendence of High Court.*] No second appeal lies against an order under s. 312 of the Code setting aside a sale. *Nana Kumar Roy* v. *Golam Chunder Dey*, I. L. R. 18 Calc. 422, followed, and the Court refused under the circumstances to interfere under s. 622. AUBHOYA DASSI *v.* PUDMO LOCHUN MONDOL.

[22 Calc. 802

6.—*Order setting aside sale under s.* 294, *Civil Procedure Code*, 1882—*Purchase by decree-holder without permission to bid at sale in execution of his decree—Civil Procedure Code* (1882), *ss.* 244 *and* 588.] No second appeal lies from an order made by a District Judge, on appeal setting aside a sale under s. 294 of the Civil Procedure Code, notwithstanding that s. 244 bars a separate suit in such a case; that section (244), whilst it precludes a right of suit, does not enlarge the right of appeal which is limited strictly by s. 588. BHAGBUT LALL *v.* NARKU ROY.

[21 Calc. 789

7.—*Order of a District Court under s.* 26 *of the Succession Certificate Act (VII of* 1889)—*Succession Certificate Act, s.* 19—*Jurisdiction of High Court and District Court.*] Section 26 of the Succession Certificate Act confers on the District Court the same appellate jurisdiction over an order of an inferior Court as is conferred by s. 19 on the High Court over the order of a District Court. There is no provision in the Act for a second appeal in any case. SABBA RAO *v.* PALANIANDI PILLAI.

[17 Mad. 167

8.—*Order passed in appeal reversing lower Court's order setting aside a sale in execution of decree—Civil Procedure Code* (1882), *s.* 588.] Under the provisions of s. 588 of the Code of Civil Procedure, no second appeal lies to the High Court from an order passed in appeal by a District Judge on an application by a judgment-debtor to have a sale in execution of a decree set aside on the ground of material irregularity. GOPI KOERI *v.* GOPI LAL.

[21 Calc. 799

9.—*Order refusing to set aside sale in execution of decree—Civil Procedure Code* (1882), *ss.* 2 *and* 588.] A judgment-debtor, whose property had been sold in execution of a decree and purchased by the decree-holder, applied that the sale be set aside on the ground that the person, at whose instance execution had proceeded, had been improperly brought on to the record. The application was rejected by the Court of first instance, and an appeal by the applicant was dismissed:—*Held*, that no second appeal lay to the High Court. DAIVANAYAGAM PILLAI *v.* RANGASAMI AYYAR.

[19 Mad. 29

10.—*Order made on application to set aside sale in execution where the auction-purchaser is a benamidar for judgment-debtor—Civil Procedure Code* (1882), *ss.* 244 *and* 311—*Bengal Tenancy Act, s.* 173.] Where the auction-purchaser is a *benamidar* for the judgment-debtor, in an application to set aside a sale under ss. 173 of the Bengal Tenancy Act and 311 of the Code of Civil Procedure, a second appeal lies to the High Court from the order made on the application, as the application is one under s. 244 of the Code. CHAND MONEE DASYA *v.* SANTO MONEE DASYA.

[24 Calc. 707

11.—*Order refusing to set aside a sale—Appeal from an order remanding a case—Code of Civil Procedure* (1882), *s.* 588, *cls.* 16 *and* 28, *and s.* 562.] Though orders under s. 562 of the Code of Civil Procedure are appealable under cl. 28 of s. 588, yet the provisions of the latter section are subject.

SPECIAL OR SECOND APPEAL—*continued.*

(1) ORDERS SUBJECT OR NOT TO APPEAL —*concluded.*

to its last paragraph which says that orders passed under this section shall be final; and therefore no second appeal lies from an order passed under s. 588, cl. 16, notwithstanding that it is an order passed by the lower Appellate Court remanding the case under s. 562, inasmuch as the order was made in a case which was itself an appeal from an order allowed by s. 588, of the Code. MATHURA NATH GHOSE *v.* NOBIN CHANDRA KUNDU BISWAS.

[24 Calc. 774

12.—*Order dismissing appeal for default—Civil Procedure Code* (1882), *s.* 584.] No appeal will lie under s. 584, of the Code of Civil Procedure in a case where an appeal has been dismissed for default, inasmuch as an appeal cannot be brought within any of the grounds therein mentioned. ANWAR ALI *v.* JAFFER ALI.

[23 Calc. 827

13.—*Order setting aside order granting review—Civil Procedure Code* (1882), *ss.* 591, 623 *and* 629.] No second appeal to the High Court lies from an order setting aside an order granting a review of judgment. KANTI CHUNDER MOOKERJEE *v.* SALIGRAM.

[24 Calc. 319

IMAM BUX *v.* MAHOMED GOPE.

[24 Calc. 319 note

(2) SMALL CAUSE COURT SUITS.

(*a*) GENERAL CASES.

14.—*Question of jurisdiction—Provincial Small Cause Courts Act* (*IX of* 1887), *s.* 16—*Civil Procedure Code* (1882), *ss.* 586 *and* 646*B*—*Civil Procedure Code Amendment Act* (*VII of* 1888), *s.* 60.] Notwithstanding s. 16 of the Provincial Small Cause Courts Act, the High Court has, on a case being submitted to it under s. 646B of the Civil Procedure Code, full power to consider the matter of jurisdiction or to deal with it on the merits so as to do substantial justice without putting the parties to the expense of a fresh trial. Where a suit, cognizable by a Small Cause Court, was tried both in the Munsif's and District Judge's Courts without objection to the jurisdiction, *held*, on a second appeal to the High Court, that s. 646B of the Civil Procedure Code must be read with s. 16 of the Provincial Small Cause Courts Act, so as to modify its full effect in a case wrongly tried by an ordinary Civil Court and taken in appeal to the District Court: both parties having submitted to the jurisdiction, it was not competent to either of them on second appeal to plead the want of jurisdiction, so as to render the proceedings taken in the suit void. SURESH CHUNDER MAITRA *v.* KRISTO RANGINI DASI.

[21 Calc. 249

15.—*Order in execution of decree in suit cognizable by Small Cause Court.*] Where the original

SPECIAL OR SECOND APPEAL—*continued.*

(2) SMALL CAUSE COURT SUITS—*continued.*

(*a*) GENERAL CASES—*concluded.*

suit is a suit of the nature cognizable in Courts of Small Causes, and the subject-matter of the suit does not exceed Rs. 500 in value, no second appeal will lie in respect of an order made in execution-proceedings relating thereto. *Harakh* v. *Ram Sarup*, I. L. R. 12 All. 579, approved; *Sri Bullov Bhattacharji* v. *Baburam Chattopadhya*, I. L. R. 11 Calc. 169; and *Aithala* v. *Subbanna*, I. L. R. 12 Mad. 116, referred to. DIN DAYAL *v.* PATRA KHAN.

[18 All. 481

(*b*) DAMAGES.

16.—*Civil Procedure Code* (1882), *s.* 586—*Suit for money paid and damages incurred by distraint of crops—Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. II, Art.* 35, *cl.* (*j*)—*Small Cause Court, Mofussil, Jurisdiction of.*] A suit to recover money paid to redeem crops which had been distrained by the defendants for rents due from persons other than the plaintiffs, and also for damages sustained on account of the distraint, is, so far as the claim relates to damages, a suit coming under cl. (*j*), Art. 35 of the Provincial Small Cause Courts Act (IX of 1887), and is therefore not entirely a suit of the nature of a Small Cause Court suit Section 586 of the Civil Procedure Code (1882) does not bar a second appeal in such a suit. DEWAN ROY *v.* SUNDAR TEWARY.

[24 Calc. 163

17.—*Code of Civil Procedure* (1882), *s.* 586—*Suit for compensation for use and occupation of land valued at less than Rs.* 500—*Provincial Small Cause Courts Act* (*IX of* 1887), *ss.* 15 *and* 23, *Sch. II, Art.* 8.] A suit for compensation for money realised by the defendants from the actual occupants of land, who were stated to have been the plaintiff's tenants, is a suit, not for rent, but for damages of a nature cognizable by the Small Cause Court; therefore, no second appeal lies to the High Court in such a suit valued at less than Rs. 500, notwithstanding that the plaint was returned by the Small Cause Court to be filed in the Civil Court under s. 23 of the Provincial Small Cause Courts Act, on the ground that the suit involved a question of title. *Mohesh Mahto* v. *Piru*, I. L. R. 2 Calc. 470; and *Muttukaruppan* v. *Sellan*, I. L. R. 15 Mad. 98, referred to. KALI KRISHNA TAGORE *v.* IZZATANNISSA KHATUN.

[24 Calc. 557

(*c*) IMMOVEABLE PROPERTY.

18.—*Suit for kattubadi and karnam's emoluments—Civil Procedure Code* (1882), *s.* 586—*Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. I, Art.* 13.] Where plaintiff sued for arrears of *kattubadi* and *karnam's* emoluments, the value of the suit being less than Rs. 500:—*Held*, that *kattubadi* and *karnam's* emoluments are neither a charge on nor interest in immoveable pro-

SPECIAL OR SECOND APPEAL—*continued.*

(2) SMALL CAUSE COURT SUITS—*continued.*

(c) IMMOVEABLE PROPERTY—*concluded.*

perty, and that no second appeal lay. MULLAPUDI BALAKRISHNAYYA *v.* VENKATANARASIMHA APPA RAU.

[19 Mad. 329

See VENKATARAMA DOSS *v.* MAHARAJAH OF VIZIANAGRAM.

[19 Mad. 103

(d) MESNE PROFITS.

19.—*Suit for mesne profits where the value of the subject-matter in dispute is less than Rs. 500—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 31—Small Cause Court, Mofussil, Jurisdiction of.*] *Held* by the Full Bench (GHOSE and BANERJEE, JJ., dissenting): That no second appeal lies in a suit for mesne profits, where the value of the subject-matter in dispute is less than Rs. 500. *Sriram Samanta* v. *Kali Das Dey*, I. L. R. 18 Calc. 316, overruled. KUNJO BEHARY SINGH *v.* MADHUB CHUNDRA GHOSE.

[23 Calc. 884

(e) PROFITS OF LAND.

20.—*Civil Procedure Code* (1882), *s.* 586—*Suit to recover a certain sum on account of a share in property—Prayer for account—Question of title.*] Plaintiffs sued to recover, on account of their share in the produce of certain *dhara* and *khoti* properties, Rs. 339-14-2, or any other sum which might be found due to them on taking account from the defendant, who was the managing *khot*. The defendant denied the plaintiffs' right to the produce of some of the properties. The first Court and the Court of appeal found that the amount due to plaintiffs was Rs. 72-14-11. On second appeal *held*, that the suit was a Small Cause Court suit, and no second appeal lay. The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKER *v.* BALAJI BAPUJI.

[21 Bom. 248

(f) TAX.

21.—*Suit for arrears of chowkidari tax payable by patnidar under patni settlement—Rent—Bengal Tenancy Act (Act VIII of 1885), s. 3 (5)—Civil Procedure Code* (1882), *s.* 586.] In a suit for arrears of *chowkidari* tax, payable by the *patnidar* under the *patni* settlement, the Court found that it was not an illegal cess, and could be legally recovered:—*Held* (upon the objection of the respondents, that the suit being one of the nature cognizable by a Small Cause Court, and valued at less than Rs. 500, no second appeal would lie under s. 586 of the Code of Civil Procedure), that as the consideration for the payment of the chowkidari tax was the occupation or the holding of the *patni* tenure, and as the payment was to be made periodically to the zemindar by the *patnidar*, and the amount agreed to be paid was lawfully payable, it came within the definition of "rent" in the Bengal Tenancy Act, and therefore a second appeal would lie. *Dheraj Mahtab Chund Bahadoor* v. *Radha Benode Chowdhry*, 8 W. R. 517; *Erskine* v. *Trilochun Chatterjee*, 9 W. R. 518; *Waston & Co.* v. *Sreekristo Bhumic*, I. L. R. 21 Calc. 132; *Rutnesser Biswas* v. *Hurish Chunder Bose*, I. L. R. 11 Calc. 221, referred to. ASSANUELA KHAN BAHADUR *v.* TIRTHABASHINI.

[22 Calc. 680

(3) GROUNDS OF APPEAL.

(a) EVIDENCE, MODE OF DEALING WITH.

22.—*Documentary evidence—Construction of document or inference to be drawn from its term—Civil Procedure Code, s. 584—Question of law.*] The question of what is the proper inference to be drawn from the terms of a document is a question of law within the meaning of s. 584, Civil Procedure Code, and can be considered in second appeal. CHOCKALINGAM PILLAI *v.* MAYANDI CHETTIAR.

[19 Mad. 485

23.—*Suit for ejectment—Proof of title—Inference of title from acts of ownership—Finding of lower Court on such question—Mixed question of law and fact—Finding of fact.*] In an ejectment suit the evidence of the plaintiff's title to the property consisted of evidence of acts of user from which the Court was asked to infer ownership in the absence of proof of a better title by the defendant. Upon review of the evidence the District Judge held that the plaintiff's title was not proved:—*Held*, that this finding, which was a mixed one of law and fact, was a finding with which the High Court could not interfere on second appeal. When, from the facts found by the lower Court, the legal inference to be drawn is certain, the High Court in second appeal may correct erroneous conclusions drawn by the lower Appellate Court. Where, however, the legal inference to be deduced from facts is doubtful, it is not open to the High Court in second appeal to interfere with the findings of the lower Court. A test which often presents itself to an English lawyer is this: Would a Judge withdraw the case from a jury on the ground that there was no evidence of the question to be found upon, such as adverse possession or title, to go to them? or would he, on the other hand, on certain facts being established, direct them to find in a particular manner? In either of these cases it would be open to the High Court in second appeal to come to a different conclusion from the lower Appellate Court. But where the question upon the facts and law is one which the Judge would lay before the jury to decide, there it is not open to the High Court to consider the propriety of the finding of the lower Appellate Court. *Lachmeswar*

SPECIAL OR SECOND APPEAL—*continued.*

(3) GROUNDS OF APPEAL—*continued.*

(*a*) EVIDENCE, MODE OF DEALING WITH—*concluded.*

Singh v. *Manowar Hossein*, I. L. R. 19 Calc. 253; L. R. 19 I. A. 48; and *Ram Gopal* v. *Shamskhaton*, I. L. R. 20 Calc. 93; L. R. 19 I. A. 228, referred to. RAJARAM *v.* GANESH HARI KARKHANIS.

[21 Bom. 91

(*b*) QUESTIONS OF FACT.

24.—*Finding of fact unsupported by reasons—Defect in judgment of lower Appellate Court.*] Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as legal findings of fact in second appeal. *Kamat* v. *Kamat*, I. L. R. 8 Bom. 368 (370); and *Roghunath Gopal* v. *Nilu Nathaji*, I. L. R. 9 Bom. 452 (454), referred to. NINGAPPA *v.* SHIVAPPA.

[19 Bom. 323

25.—*Finding of fact—Finding of lower Court based on misconception of evidence—Defect in judgment of Appellate Court.*] The finding on an issue of a lower Appellate Court which is based on a misconception of what the evidence is, cannot be accepted in second appeal as a legal finding on it. GOVIND *v.* VITHAL.

[20 Bom. 753

26.—*Finding on the existence of custom or usage, mainly based on irrelevant matters—Evidence Act (I of 1872), s. 13—Mistrial—Remand.*] In suits by a landlord for ejectment of purchasers from ryots having only a right of occupancy on the ground that the holdings of such ryots were not transferable without the landlord's consent, the defendants pleaded custom or usage in support of the transfers. Questions arose as to the character of the usage required to be proved in such cases and the nature of the evidence required to prove the usage. In second appeal the High Court upon an examination of the evidence relied on by the lower Court of Appeal, and on reference to s. 13 of the Indian Evidence Act (I of 1872):—*Held*, that the finding of that Court on the existence of the usage having been mainly based on irrelevant matters, the appeal was not properly tried, and the case must be remanded for retrial. *Womes Chunder Chatterjee* v. *Chundee Churn Roy Chowdhry*, I. L. R. 7 Calc. 293, referred to. PALAKDHARI RAI *v.* MANNERS.

[23 Calc. 179

27.—*Proof of custom—Misconception as to mode of proof.*] If a decree appealed against is based on wrong views of the law of evidence, or on a misconception of the canons which the Privy Council and the High Court have defined as to how a special custom should be proved, the High Court will interfere in second appeal. DESAI RANCHODDAS VITHALDAS *v.* RAWAL NATHUBHAI KESABHAI.

[21 Bom. 110

SPECIAL OR SECOND APPEAL—*continued.*

(3) GROUNDS OF APPEAL—*concluded.*

(*b*) QUESTIONS OF FACT—*concluded.*

28.—*Remand to the Appellate Court—Additional evidence in Appellate Court—Finding of fact upon evidence taken after remand—Procedure in the second Court of Appeal—Civil Procedure Code* (1882), *ss.* 568, 584, 585 *and* 587.] In a second appeal, the High Court set aside the decrees of the lower Courts on the ground that certain issues raised in the suit were not considered by those Courts, and remanded the case to the lower Appellate Court for a proper decision of the case. The lower Appellate Court took evidence on the issues not tried before, and came to findings of fact on that evidence:—*Held*, that the lower Appellate Court tried the case, not as an original case, but as an appeal, and acting under the powers given to it took fresh evidence:—*Held*, that on second appeal the High Court is precluded by the Code of Civil Procedure from going into facts, and that restriction of power is not confined only to cases where evidence is taken in the first Court. *Gopal Singh* v. *Jhakri Rai*, I. L. R. 12 Calc. 37, followed; *Balkishan* v. *Jasoda Kuar*, I. L. R. 7 All. 765, referred to; *Hinde* v. *Brayan*, I. L. R. 7 Mad. 52, not followed. BENI PERSHAD KUARI *v.* NAND LAL SAHU.

[24 Calc. 98

29.—*Enhanced rent on irrigated land—Implied contract.*] A zemindar tendered to ryots on his estate *pottahs* providing (*inter alia*) for the payment of rent in which the land assessment was consolidated with a water-cess in respect of certain land irrigated under the Kistna anicut. This had not been sanctioned by the Collector under the Madras Rent Recovery Act, s. 11, but it was found that it had been paid by the ryots for many years. The Court of first appeal held on this finding that there were implied contracts on the part of the ryots to pay it:—*Held*, that the finding as to the existence of an implied contract to pay the enhanced rent was a finding of fact, and must therefore be accepted on second appeal. SIRIPARAPU RAMANNA *v.* MALLIKARJUNA PRASADA NAYUDU.

[17 Mad. 43

30—*Civil Procedure Code* (1882), *ss.* 584 *and* 585—*Findings of fact—Inference of law which the facts found are insufficient to justify.*] Where the lower Appellate Court arrives at a conclusion, which is an inference based upon an erroneous view of law, the judgment is open to question in second appeal. *Lachmeswar Singh* v. *Manowar Hossein*, I. L. R. 19 Calc. 253; L. R. 19 I. A. 48; *Ram Gopal* v. *Shamskhaton*, I. L. R. 20 Calc. 93; L. R. 19 I. A. 228, referred to. ISHAN CHUNDER DAS SARKAR *v.* BISHU SIRDAR.

[24 Calc. 825

(4) OTHER ERRORS OF LAW OR PROCEDURE.

(*a*) APPEALS.

31.—*Appeal heard ex parte without respondent being aware of hearing—Application for rehearing*

SPECIAL OR SECOND APPEAL—*continued.*

(4) OTHER ERRORS OF LAW OR PROCEDURE—*concluded.*

(*a*) APPEALS—*concluded.*

barred before he was aware of decree against him—Civil Procedure Code, ss. 560 *and* 584 (*c*)—*Limitation Act, Sch. II, Art.* 169—*Power of High Court to interfere on special appeal.*] Where an appeal was heard *ex parte* by a lower Appellate Court, and the decree of the Court of first instance reversed in the absence of the respondent, on whom notice of appeal had not been duly served, and who was not aware of the proceedings till after the time for applying for a rehearing under s. 560 of the Civil Procedure Code and Limitation Act, Sch. II, Art. 169, had expired:—*Held*, that the High Court in second appeal had power to interfere under s. 584 (*c*), Civil Procedure Code. BALAJI RAU *v.* SITHABHOY.

[19 Mad. 414

(*b*) LOCAL INVESTIGATION.

32.—*Disregard of report on local investigation—Disputed boundary—Grounds of appeal—Civil Procedure Code* (1882), *s.* 584.] The Court of first instance accepted as correct a boundary line mapped by an Amin, dividing the estates of the opposite parties. The lower Appellate Court, after remanding the suit for a second local investigation and report, determined to disregard the second return, which differed from the first, and affirmed the judgment. Both parties having appealed, the High Court, dissatisfied as to this disregard of the second return, decided to hear the appeal as a regular one, examined the evidence, and reversed the judgment of the Court below:—*Held* by the Privy Council, that to have dealt with the appeal as a regular appeal was in excess of the Court's jurisdiction; and that it had no power to hear the appeal as a second appeal, there not having been, in the proceedings below, any error or defect, within the meaning of s. 584 of the Civil Procedure Code, which contained the only grounds of second appeal. LUKHI NARAIN JAGADEB *v.* JODU NATH DEO.

[21 Calc. 504
[L. R. 21 I. A. 39

33.—*Hearing and deciding case, after granting commission for local investigation, without awaiting return of such commission—Ground of appeal—Civil Procedure Code, s.* 584.] Where a Court on the application of a party or otherwise has issued a commission for a local investigation, it is a substantial error in procedure and therefore a ground of special appeal under s. 584 of the Code of Civil Procedure, if the Court proceeds to hear and determine the case without having the return to such commission before it. MADHO SINGH *v.* KASHI SINGH.

[16 All. 342

(5) PROCEDURE IN SPECIAL APPEAL.

34.—*Objection taken for first time on appeal—Necessity of notice to quit—Objection as to want of parties—Practice—Suit for specific performance.*] An objection as to the necessity of notice to quit is one which may be taken in second appeal. An objection that certain of the defendants should not have been made parties to a suit for specific performance, because they were not parties to the agreement, cannot be taken for the first time in second appeal, as it only involves a question of practice. DODHU *v.* MADHAVRAO NARAYAN GADRE.

[18 Bom. 110

35.—*Point of law raised for first time in second appeal.*] In a suit by a mortgagee for possession of the mortgaged land, the mother of the deceased owner claimed to remain in possession of it in virtue of her right to maintenance. At the hearing of the second appeal, a claim was made on her behalf not merely to maintenance, but to a share in the property as mother of the last owner. The point had not been taken in the lower Courts, nor was it one of the grounds of appeal:—*Held*, that it could not be taken for the first time in second appeal. It set up a new right differing in kind from that asserted throughout the trial, and not differing merely in degree as was the case in *Nagesh* v. *Gururao*, I. L. R. 17 Bom. 303. RACHAWA *v.* SHIVAYOGAPA.

[18 Bom. 679

36.—*Objection taken for first time on appeal—Misjoinder of causes of action—Civil Procedure Code, s.* 44.] Where an objection under s. 44 of the Code of Civil Procedure as to misjoinder of causes of action was raised for the first time on appeal, the High Court on second appeal declined to entertain it. *Dhondiba Krishnaji Patel* v. *Ramchandra Bhagvat*, I. L. R. 5 Bom. 554, followed. MAULA *v.* GULZAR SINGH.

[16 All. 130

37.—*Objection to jurisdiction on ground of wrong valuation of suit—Suits Valuation Act* (*VII of* 1889), *s.* 11.] The High Court held that it was not at liberty to entertain an objection taken for the first time on second appeal that the suit was not within the pecuniary limits of the District Munsif's jurisdiction, as it appeared on the merits that the appellant had not been prejudiced. MUTHUSAMI MUDALIAR *v.* NALLAKULANTHA MUDALIAR.

[18 Mad. 418

38.—*Objection taken for first time in second appeal that preliminaries to suit had not been taken—Practice.*] In a suit for a declaration of the plaintiffs' right to have their names registered as purchasers, an objection having been raised, in second appeal, that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register:—*Held*, that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature.

SPECIAL OR SECOND APPEAL— *continued.*

(5) PROCEDURE IN SPECIAL APPEAL—*contd.*

That objection, however, being taken for the first time in second appeal, was disallowed. BHIKAJI BAJI *v.* PANDU.

[19 Bom. 43

39.—*Objection based on point of law.*] An objection based upon a point of law may be made in second appeal, provided it does not involve the taking of any additional evidence on matters of disputed facts. GAVDAPPA *v.* GIRIMALLAPPA.

[19 Bom. 331

40.—*Objection taken on appeal from final decree to order of remand not appealed from.*] The contention that a map was admissible in evidence was held to be open to the appellant, on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible. *Savitri* v. *Ramji*, I. L. R. 14 Bom. 232; and *Rameshur Singh* v. *Sheodin Singh*, I. L. R. 12 All. 510, followed. KANTO PRASHAD HAZARI *v.* JAGAT CHANDRA DUTTA.

[23 Calc. 335

41.—*Offer to pay stamp duty and penalty in second appeal not allowed.*] An instrument which is not duly stamped will not be admitted on second appeal on payment of stamp and penalty when there is no evidence that the stamp and penalty were tendered and refused on the hearing of the first appeal. *Ramkrishna Gopal* v. *Vithu Shivaji*, 10 Bom. 441, referred to. LAKSHMANDAS RAGHUNATHDAS *v.* RAMBHAU MANSARAM.

[20 Bom. 791

42.—*Wrong issue framed by Lower Court—Finding in judgment on the point raised by correct issue—Ground for remand.*] Where the lower Appellate Court framed a wrong issue for decision, but it appeared from its judgment that there was a finding on the point which would have been raised if the correct issue had been framed, the High Court in second appeal refused to remand the case for a new finding on that issue. VISHNU RAMCHANDRA *v.* GANESH APPAJI CHAUDHARI.

[21 Bom. 325

43.—*Amendment of plaint by putting new plaintiff on the record on second appeal.*] Where plaintiffs had sued as executors by implication under a will which provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, which adoption had been made:—*Held*, under the circumstances of the case the plaint should be amended on second appeal by substituting the adopted son as plaintiff with one of the original plaintiffs as his next friend. SESHAMMA *v.* CHENNAPPA.

[20 Mad. 467

44.—*Apportionment of mortgage-debt—Question of apportionment first raised in second appeal—Practice.*] A plaintiff, who had purchased part of certain mortgaged property and sued for possession, obtained a decree ordering that he should get possession on payment of the whole mortgage debt. He did not in the lower Courts ask that the mortgage debt should be apportioned, but did so in second appeal to the High Court. Under the circumstances the High Court refused to interfere with the decree. The plaintiff had a remedy by suit for contribution. YADAO BAJAJI SURYARAV *v.* AMBO.

[21 Bom. 567

SPECIAL OR SECOND APPEAL— *concluded.*

(5) PROCEDURE IN SPECIAL APPEAL—*concluded.*

SPECIAL COMMISSIONER, REGISTER PREPARED BY.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[22 Calc. 112

SPECIAL JUDGE.

See BENGAL TENANCY ACT, s. 102.

[22 Calc. 244

See BENGAL TENANCY ACT, s. 108.

[21 Calc. 521

See DEKHAN AGRICULTURISTS ACT, s 53.

[19 Bom. 286

See REVIEW—POWER TO REVIEW.

[19 Bom. 116
[20 Bom. 281

——, Order of an appeal from Settlement Officer.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776, 935
[24 Calc. 462

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[21 Calc. 935
[18 Bom. 347
[19 Bom. 286
[23 Calc. 723

See VALUATION OF SUIT—APPEALS.

[23 Calc. 723

SPECIFIC PERFORMANCE.

See PARTIES — PARTIES TO SUITS—SPECIFIC PERFORMANCE.

[16 Mad. 415
[19 Mad. 211

——, Discretion of Court to grant.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.

[18 Bom. 702
[19 Bom. 764

SPECIFIC PERFORMANCE—*continued.*

——, Suit for.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[18 Bom. 110

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[19 Mad. 211

See PARTIES — PARTIES TO SUITS — SPECIFIC PERFORMANCE.

[18 Mad. 415
[19 Mad. 211

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

[18 Bom. 537

See RES JUDICATA—MATTERS IN ISSUE.

[18 Bom. 537

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[18 Bom. 110

See VALUATION OF SUIT—APPEALS.

[18 Bom. 207

See VENDOR AND PURCHASER — PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER.

[24 Calc. 897
[21 Bom. 827

1.—*Specific Relief Act (I of 1877), s. 22—Compromise—Specific relief granted in respect of an agreement concerning which both parties had at the time of making it equal means of knowledge, though their relative legal positions were subsequently discovered to be different from what they had supposed at the time.*] *N*, a large landed proprietor, died without issue in 1867. His widow *G* held possession of the estates down to her death in 1878. After some disputes as to the succession, one *N K*, claiming as widow of an alleged adopted son of *N*, was put into possession by the revenue authorities. Against *N K* two suits were brought for the property left by *N*. The first suit was brought in April, 1879, by one *C*, claiming as sister's son of *N*. *C* being a pauper, sold a portion of the property in suit to one *M* for Rs. 20,000 and made *M* a co-plaintiff in the suit. The second suit against *N K* was instituted in May, 1879, by *S* and others, the defendants, appellants in this present suit, who claimed title as the nearest *sapindas* of the deceased *N*. In each of these two suits the plaintiff or plaintiffs were successful. In each the defendant appealed. In the case of *C*, the defendant was successful, and the plaintiff's suit was dismissed by the High Court on the 7th of December, 1886; in the other case, the parties on the 25th of July, 1885, settled their dispute by a compromise. While the two suits abovementioned were pending, *S* and his co-plaintiffs instituted a suit on the 2nd of July, 1883, against *C* and *M* asking for a declaration that they were entitled to succeed to the property

SPECIFIC PERFORMANCE—*continued.*

of the deceased *N*. In January, 1884, the female defendant having died, the Collector of Bareilly was brought on to the record of this suit as guardian of her minor children; and, on the 19th of January, 1885, a compromise was entered into between the Collector, on behalf of the minor children of *M* and one adult daughter of *M* on the one hand, and the plaintiffs on the other, whereby the representatives of *M* relinquished the suit and consented to a decree being passed in favour of the plaintiffs, and the plaintiffs agreed that when they got possession of the property, they would make over certain villages and a certain sum of money to the representatives of *M*. On the 6th of January, 1888, the Collector of Bareilly instituted a suit for specific performance of the compromise of the 19th January, 1885. The Court of first instance decreed the plaintiffs' claim. On appeal by the defendants to the High Court it was *held* that there was nothing in s. 22 of the Specific Relief Act which would stand in the way of a decree for specific performance of the compromise. The compromise when entered into in 1883 was not without consideration, and the subsequent course of litigation could not affect the position of the parties as regards the present suit based thereon. SHIB LAL *v.* COLLECTOR OF BAREILLY.

[16 All. 423

2.—*Sale-deed fraudulently suppressed by defendant before registration—Cause of action.*] Where the defendant agreed to sell certain land to the plaintiff and executed a sale-deed in favour of the plaintiff to that effect, but subsequently obtained possession of it before registration and fraudulently suppressed it:—*Held*, that the plaintiff was entitled to enforce specific performance of the contract by the execution and registration of a fresh document. CHINNA KRISHNA REDDI *v.* DORASAMI REDDI.

[20 Mad. 19

3.—*Joint contractees—Right of one contractee to specific performance against the wish of the others—Specific Relief Act (I of 1877), s. 16.*] Under a single contract to convey land to several persons, it is not open to some of the joint contractees to enforce specific performance of the contract if the other contractees refuse to have specific performances. SAFIUR RAHMAN *v.* MAHARAMUNNESSA BIBI.

[24 Calc. 832

4.—*Suit for specific performance of a contract against a minor—Contract entered into by a guardian with the sanction of the Court—Act XL of 1858, s. 18—Guardians and Wards Act (VIII of 1890), s. 31.*] In a suit to enforce specific performance of a contract against a minor, entered into by a guardian appointed under Act XL of 1858 with the sanction of the Court, it was not shown that the contract was for the benefit of the minor:—*Held*, that a decree for specific performance of a contract should not be made against the defendant while an infant. *Flight* v. *Holland*, 4 Russ. 298; and *Sikher Chund* v. *Dulputty Singh*, I. L. R. 5 Calc. 363, *referred to*:—

SPECIFIC PERFORMANCE—*concluded.*

Held, also, that although the jurisdiction to decree specific performance is discretionary, it must be judicially exercised, and no Court would, even if it could, make a decree for the specific performance of a contract, unless the contract was shown to be for the infant's benefit. JUGUL KISHORI CHOWDHURANI *v.* ANUNDA LAL CHOWDHURI.

[22 Calc. 545

5.—*Suit for specific performance of contract against minor— Contract Act (IX of 1872), s. 11—Specific Relief Act (I of 1877), s. 28—Hindu law—Guardian.*] The mother and guardian of a Hindu minor entered into a contract for the sale of his land. The vendee sued the minor by his mother and guardian *ad litem* for specific performance of the contract and for possession. It was found that the contract was binding on the minor:—*Held*, that the suit was maintainable. *Fatima Bibi* v. *Debnauth Shah*, I. L. R. 20 Calc. 508, dissented from. KRISHNASAMI *v.* SUNDARAPPAYYAR.

[18 Mad. 415

SPECIFIC RELIEF ACT (I OF 1877).

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR.

[18 Bom. 474

——, s. 9.

See APPEAL—ORDERS.

[22 Calc. 330

——, Decree for possession under.

See EVIDENCE—CIVIL CASES—DECREES, JUDGEMNTS AND PROCEEDINGS IN FORMER SUITS—GENERALLY.

[23 Calc. 693

——, s. 9.—*Nature of possession giving right of suit—Juridical possession.*] Where the plaintiff alleged that he was in possession of a certain room as representing his father and uncle who were alive but who were not parties to the suit, and that he had been dispossessed from such room, within six months of the institution of the present suit:—*Held*, that his possession, not being juridical possession, did not entitle him to maintain a suit under s. 9 of the Specific Relief Act. Permission to be allowed to amend the plaint by alleging that the possession of the plaintiff was exclusive possession on his own account was not allowed, such allegation being inconsistent with the case on which he came into Court. NRITTO LALL MITTER *v.* RAJENDRO NARAIN DEB.

[22 Calc. 562

——, s. 16.

See SPECIFIC PERFORMANCE.

[24 Calc. 832

——, s. 21.—*Contract to refer dispute to arbitration—Refusal to perform such contract—Right of suit.*] To bar a suit under s. 21 of the Specific Relief Act, a refusal to arbitrate must be before the action is brought. CRISP *v.* ADLARD.

[23 Calc. 956

SPECIFIC RELIEF ACT (I OF 1877)—*continued.*

——, s. 22.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.

[18 Bom. 702
[19 Bom. 764

See SPECIFIC PERFORMANCE.

[16 All. 423

——, s. 27.

See VENDOR AND PURCHASER—INVALID SALES.

[18 Mad. 43

——, s. 28.

See SPECIFIC PERFORMANCE.

[18 Mad. 415

——, s. 35.—*Rescission of contract, Suit for—Evidence necessary to set aside contract.*] In order that a contract should be set aside under s. 35 (*b*) of the Specific Relief Act. (I of 1877), the plaintiff should be shown to have been less to blame in the transaction than the defendant. HARI BALKRISHNA *v.* NARO MORESHVAR.

[18 Bom. 342

——, s. 36.

See REGISTRATION ACT, S. 17.

[20 Mad. 58

——, s. 42.

See CASES UNDER DECLARATORY DECREE, SUIT FOR.

See HINDU LAW — REVERSIONERS — ARRANGEMENT BETWEEN WIDOW AND REVERSIONERS.

[22 Calc. 354

See HINDU LAW — REVERSIONERS — POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

[18 Mad. 53

See MADRAS LAND REVENUE ASSESSMENT ACT S. 2.

[19 Mad. 292

——, s. 45.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[22 Calc. 717

——, s. 53.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.

[23 Calc. 351

——, s. 54.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.

[18 Bom. 702
[19 Bom. 764

SPECIFIC RELIEF ACT (I OF 1877)—*concluded.*

See INJUNCTION—SPECIAL CASES—INJURY OR OBSTRUCTION TO RIGHTS OF PROPERTY.

[20 Bom. 704
[24 Calc. 260
[19 All. 259

See INJUNCTION — SPECIAL CASES—INTRUSION IN OFFICE.

[21 Bom. 821

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR.

[20 Bom. 704

——, s. 56.

See INJUNCTION— SPECIAL CASES—EXECUTION OF DECREE.

[18 Mad. 338
[23 Calc. 351

——, s. 57.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.

[18 Bom. 702
[19 Bom. 764

SPY.

See ACCOMPLICE.

[19 Bom. 363

STAMP.

See POWER OF ATTORNEY.

[23 Calc. 187

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[20 Bom. 791

See CASES UNDER STAMP ACT.

STAMP ACT (I OF 1879).

1.—s. 3, cl. 4, and s. 61.—*Acknowledgment of debt in writing—Attestation by witnesses—Bond.*] Documents which are in form acknowledgments only are not converted into bonds, as defined in s. 3, cl. 4 (*b*) of the Stamp Act (I of 1879), merely because they contain memoranda as to the rate of interest at which the loan is made and are attested by witnesses. No document can be a bond within the above section, unless it is one which by itself creates an obligation to pay the money. HIRA LAL SIRCAR *v.* QUEEN-EMPRESS.

[22 Calc. 757

2.—s. 3, cl. 4 (b).— *Bond — Promissory note—Attestation by witness.*] A document by which the executant promised to pay to the person named therein a certain sum of money on a certain date with interest is not "attested by a witness" within the meaning of cl. (*b*) of sub-section 4 of s. 3 of Act I of 1879, merely by reason of its bearing on the face of it a statement by the scribe of the document, that the document was correct and was written by his pen. REFERENCE UNDER STAMP ACT, s. 49.

[17 All. 211

3.—s. 3, cl. 15.—*Policy of insurance or memorandum of proposed insurance—Document on the face of it not contemplating necessity of any other formal document.*] A document not being a mere "slip" or memorandum of a proposed insurance, and mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium, and providing for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and lastly, expressly guaranteeing payment of losses and claims settled under it, and which, on the face of it, does not contemplate the necessity of any other document of a more formal character being passed to the assured, requires to be stamped as a policy under cl. 15, s. 3 of the Stamp Act (I of 1879). IN RE MARINE INSURANCE CERTIFICATE.

[19 Bom. 130

——, s. 3, cl. 19.

See SCH. I, ART. 54.

[20 Bom. 210

——, s. 5.

See POWER-OF-ATTORNEY.

[23 Calc. 187

——, s. 7, para. (2).—*Lease and mortgage combined in one document—Stamp Act (I of 1879), s. 3, cl. 13.*] A zemindar leased certain land in his village to some cultivators at a rent of Rs. 365 per annum in cash and of certain cart-loads of straw and grass, by a document which also contained an agreement by the lessees hypothecating certain other property belonging to them for the purpose of securing the payment of the agreed rent, and for the performance of the engagement for the delivery of the other articles:—*Held*, that the document above referred to should be stamped as a mortgage-deed according to the definition contained in s. 3, cl. 13 of Act I of 1879, and also that it fell within the second paragraph of s. 7 of the above Act. *Ex parte Hill*, I. L. R. 8 Calc. 254, referred to. REFERENCE UNDER STAMP ACT, s. 49.

[17 All. 55

——, s. 11.

See s. 16.

[19 Bom. 635

——, s. 16, and ss. 11 and 34.—*Hundi—Execution — Stamp affixed at time of execution and subsequently cancelled on delivery of hundi—Evidence, Admissibility of.*] Where a *hundi* was written by the defendant and stamped by him with a one-anna stamp which was left uncancelled, and the *hundi* was subsequently taken by him to the plaintiff's son who received it from him and

STAMP ACT (I OF 1879)—*continued.*

at the time of receiving it cancelled the stamp by writing the date across it:—*Held*, that the *hundi* was duly stamped under ss. 10 and 16 of the Stamp Act (I of 1879) and was admissible in evidence. If at the time of delivery, which completed its legal character, the *hundi* was stamped, and if the cancellation took place at that time as part of the same transaction, it was sufficient. A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or if, having been at any time previously affixed, it is cancelled at the time of execution. When applied to a document the term "execution" means the last act or series of acts which completes it. It might be defined as formal completion. The contract on a negotiable instrument until delivery is incomplete and revocable. Until delivery a *hundi* is not clothed with the essential characteristics of a negotiable instrument. BHAWANJI HARBHUM *v.* DEVJI PUNJA.

[19 Bom. 635

——, s. 34.

See s. 16.

[19 Bom. 635

1.—s. 34.—*Suit on unstamped hundi—Admission of liability by defendant.*] In a suit brought upon two *hundis*, which were inadmissible in evidence for want of impressed stamps, the Judge allowed the claim, holding that the defendants' admissions in their written statement rendered it unnecessary to put the *hundis* in evidence:—*Held*, reversing the decree, that a *hundi* is "acted upon" within the meaning of s. 34 of the Stamp Act where a decree is passed on it, whether proved or admitted, and that the Court caanot give effect to it in either case. CHENBASAPA *v.* LAKSHMAN RAMCHANDRA.

[18 Bom. 369

2.—s. 34.—*Unstamped balance of account—Evidence—Acknowledgment of liability—Limitation Act, 1877, s. 19.*] Though an unstamped acknowledgment cannot be, within the meaning of s. 34 of the Stamp Act, "acted upon" as an acknowledgment of a particular sum being due, still it may be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of goods sold. FATECHAND HARCHAND *v.* KISAN.

[18 Bom. 614

Contra MULJI LALA *v.* LINGU MAKAJI.

[21 Bom. 201

3.—s. 34, and ss. 35 and 39.—*Admission of unstamped document in evidence on payment of penalty—Necessity for production of original document.*] Where a Court has occasion to admit a previously unstamped document in evidence upon payment of a penalty under s. 34 and the following sections of Act I of 1879, it is necessary that the original instrument should be before the Court. KALLU *v.* HALKI.

[18 All. 295

STAMP ACT (I OF 1879)—*continued.*

——, s. 39.—*Lost document which is unstamped—Payment of penalty—Secondary evidence of lost document.*] In the case of a lost document no penalty can be levied and secondary evidence admitted, for s. 39 of the Stamp Act presupposes that the document on which a penalty can be paid is forthcoming. *Kopasan* v. *Shamu*, I. L. R. 7 Mad. 440, followed. RANGA RAU *v.* BHAVAYAMMI.

[17 Mad. 473

1.—s. 51 (a).—*Allowance for spoiled stamps—Mistake made when using stamped paper.*] Section 51 (*a*) of the Stamp Act, which permits an allowance being made for spoiled stamps, applies only to cases of accidental spoiling of the paper of which the stamp is made, and does not cover cases of the use of the paper in an ordinary way, in which a mistake has been made. NARASIMHA CHARYULU *v.* APPA RAU.

[18 Mad. 122

2.—s. 51.—*Spoiled stamp—Accidental injury to stamp.*] The purchaser at a Court-sale presented a stamped paper for the engrossment of the sale-certificate. The stamp was inadvertently punched by some officer of the Court, but the paper was used as intended and delivered to the purchaser. Subsequently a Deputy Collector, treating the certificate as unstamped, levied the stamp duty together with a penalty:—*Held*, that the document was duly stamped, and that the amount levied should be refunded. REFERENCE UNDER STAMP ACT, s. 46.

[18 Mad. 235

——, Sch. I, Art. 1.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

[18 Bom. 614
[21 Bom. 201

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.

[18 Bom. 614
[21 Bom. 201

——, Sch. I, Art. 4.—"*Agreement to lease.*"] An agreement by a zemindar to execute a formal deed of lease of his zemindari which is under attachment after obtaining a certificate from the Court under s. 305 of the Civil Procedure Code, is an "agreement to lease" under Art. 4, Sch. I of the Stamp Act. REFERENCE UNDER STAMP ACT, s. 46.

[17 Mad. 280

——, Sch. I, Art. 5.—*Letters submitting to arbitration.*] Letters written by parties authorising arbitrators to arbitrate between them do not require to be stamped, as forming an "agreement" within the meaning of Art. 5, Sch. I of the Stamp Act. GANGARAM KUSHABA RANGOLE *v.* NARAYAN BABAJI RANGOLE.

[19 Bom. 32

STAMP ACT (I OF 1879)—*continued.*

——, Sch. I, Art. 16.—*Sale of property subject to mortgage—Valuation of property sold—Computation of purchase-money—Certificate of sale—Proclamation of sale—Mortgages noted in proclamation of sale—Civil Procedure Code* (1882), *ss.* 282 *and* 287.] Mortgages noted in the proclamation of sale as claims upon the property sold, should not be entered in the certificate of sale, or be computed as part of the purchase-money, unless they have been admitted by the parties, or established by decree, or unless they have been declared, under s. 282 of the Civil Procedure Code (Act XIV of 1882), to be charges on the property, and the Court has seen fit to sell it subject to them, but they should be entered in the certificate and computed as part of the purchase-money if they have been thus admitted or established, or if they have been declared under s. 282 of the Civil Procedure Code, and the sale has been held subject to them. Claims admitted by parties or established by the decree of a Court should be entered in the proclamation of sale as charges upon the property, though they have come to the knowledge of the Court in an inquiry under s. 287 only, and have not been made the subject of an order under s. 287 of the Civil Procedure Code. SHANTAPPA CHEDAMBARAYA *v.* SUBRAO RAMCHANDRA YELLAPUR.

[18 Bom. 175

1.—Sch. I, Art. 21.—*Company—Winding-up—Transfer of property by old to new company—Conveyance.*] An instrument, which is in terms a conveyance of property at an agreed value, is a sale of such property at that price, and is governed by Art. 21, Sch. I of the Stamp Act (I of 1879). The circumstance that the transaction is a part of a larger transaction, cannot affect the character of the instrument. REFERENCE UNDER STAMP ACT, s. 46.

[20 Bom. 432

2.—Sch. I, Art. 21, and Art. 60 (b).—*Conveyance—Transfer of lease.*] When by one and the same deed there is a conveyance of freehold lands and goodwill and a transfer of interest secured by leases, the deed should be stamped under Art. 21 of Sch. I of the Stamp Act (I of 1879) with an *ad valorem* duty on the conveyance of the freehold property, goodwill, buildings and erections, and under Art. 60 of the schedule with a duty of Rs. 5 on the transfer of each of the interests secured by the leases. REFERENCE UNDER STAMP ACT, 1879, s. 46.

[23 Calc. 283

3.—Sch. I, Art. 21.—*Conveyance.*] The amount payable on a conveyance under the Stamp Act, Sch. I, Art. 21, is properly calculated on the consideration set forth therein; and not on the intrinsic value of the property conveyed. REFERENCE UNDER STAMP ACT, S. 46.

[20 Mad. 27

——, Sch. I, Art. 22.—*Copy of order of Municipal Board certified by the Secretary—Public officer—Evidence Act (I of* 1872), *ss.* 74, 76 *and* 78.] *Held*, that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a true copy by the Secretary to the Board, came within Art. 22 of the first schedule to the Indian Stamp Act, 1879, and required to be stamped. The Secretary of a Municipal Board is a "public officer" within the meaning of Art. 22 of the first schedule to the Stamp Act, 1879, for the purposes indicated therein. REFERENCE UNDER STAMP ACT, S. 46.

[19 All. 293

——, Sch. I, Art. 29.

See SCH. I, ART. 44.

[21 Calc. 241

——, Sch. I, Art. 44 (b), and Art. 29.—*Mortgage advance payable on demand—Power of sale in default of repayment of advance—Pledge.*] In consideration of an advance of Rs. 1,450 on interest, repayable on demand, certain boat-owners assigned to *S & Co.* their paddy boats, the boat owner retaining, working, and being responsible for the safety of, the boats, and agreeing, so long as the sum advanced with interest should remain unpaid, to use their boats for the sole purpose of supplying paddy to *S & Co.*, and to deliver such paddy (which was to be paid for at the market rate) at the end of each trip as directed by *S & Co.* On failure to make repayment on demand, *S & Co.* were empowered to take possession and to sell the boats:—*Held*, that the document was a mortgage and not a pledge, and as such should be stamped under Art. 44 (*b*) of Sch. I of the Stamp Act of 1879. IN THE MATTER OF KO SHWAY AUNG *v.* STRANG STEEL & CO.

[21 Calc. 241

1.—Sch. I, Art. 54. — *Release—Partition Deed of.*] A Hindu executed in favour of his father, as representing the interest of the other members of his family, an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid. The instrument further provided that the lands allotted to the executant for life should go towards the shares of his sons at any partition effected after his death:—*Held*, that the instrument was not a deed of partition, but a release and should be stamped accordingly. REFERENCE UNDER STAMP ACT, S. 46.

[18 Mad. 233

2.—Sch. I, Art. 54, and Art. 57, and s. 3 (19). — *Settlement — Testamentary document — Trust-deed.*] An instrument called a trust-deed by the party executing it was intended to have immediate operation. It vested the property in the trustees at once, and the provisions as to the management and the ultimate beneficial interest in the property showed that it was contemplated that its operation might extend beyond the lifetime of the owner:—*Held*, that the instrument fell under the definition of a settlement in

STAMP ACT (I OF 1879)—*concluded.*

the Stamp Act (I of 1879), and should be stamped accordingly. REFERENCE BY THE COLLECTOR AND SUPERINTENDENT OF STAMPS, BOMBAY.

[20 Bom. 210

——, **Sch. I, Art. 60.**

See SCH. I, ART. 21.

[23 Calc. 283

——, **Sch. II, Art. 13, cl. (c).**—*Counterpart of lease of salt-pans.*] A counterpart of a lease of salt-pans held not to be exempt from stamp duty, as it did not purport to be a counterpart of a lease granted to a cultivator. MANJUNATH MANGESHAYA BAINDUR *v.* MANGESH SHESHAGIRIAPA GOKARNKAR.

[18 Bom. 546

——, **Sch. II, cl. 15. (b).**—*Payment of money without consideration—Receipt for Counsel's fees.*] A receipt given by Counsel for a sum above Rs. 20 paid to him as a fee for professional services is exempt from stamp duty. REFERENCE FROM THE BOARD OF REVENUE, N.-W. P. AND OUDH.

[16 All. 132

STAMP-DUTY.

——, **Right to recover.**

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[21 Bom. 126

See SET-OFF—GENERAL CASES.

[21 Bom. 126

STATUTE.

——, **Car. II, s. 2.**

See FOREIGNERS.

[18 Bom. 636

—— **13 Eliz. cap. 5.**

See TRANSFER OF PROPERTY ACT, S. 53.

[22 Calc. 185

—— **27 Eliz. cap. 4.**

See TRANSFER OF PROPERTY ACT, S. 53.

[22 Calc. 185

—— **52 Geo. III, cap. 101 (Romilly's Act).**

See RIGHT OF SUIT — CHARITIES AND TRUSTS.

[17 Mad. 462
[24 Calc. 418

—— **4 Geo. IV, cap. 34, s. 3.**

See ACT XIII OF 1859, S. 2.

[21 Calc. 262

—— **2 & 3 Will. IV, cap. 51.**

See PRACTICE — CIVIL CASES — ADMIRALTY COURT.

[22 Calc. 511

STATUTE—*concluded.*

—— **5 and 6 Vict. cap. 45.**

See COPYRIGHT.

[19 Bom. 557

—— **11 and 12 Vict. cap. 21.**

See INSOLVENT ACT.

—— **12 and 13 Vict. cap. 106, s. 65.**

See INSOLVENT ACT, S. 60.

[21 Calc. 1013

—— **17 and 18 Vict. cap. 104.**

See MERCHANT SHIPPING ACT, 1854.

—— **18 and 19 Vict. cap. 91.**

See MERCHANT SHIPPING ACT, 1855.

—— **24 and 25 Vict. cap. 67, s. 22.**

See FOREIGNERS.

[18 Bom, 636

—— **24 and 25 Vict. cap. 104, s. 7.**

See JUDGE OF HIGH COURT.

[16 All. 136

——, **s. 11.**

See INSOLVENT ACT, S. 5.

[21 Bom. 405

——, **s. 13.**

See LETTERS PATENT, HIGH COURT, CL. 15.

[17 Mad. 100

——, **s. 15.**

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE —LEAVE TO SUE.

[18 Mad. 236

See SUPERINTENDENCE OF HIGH COURT —CHARTER ACT (24 AND 25 VICT. CAP. 104), S. 15.

[18 All. 4

——, **s. 16.**

See JUDGE OF HIGH COURT.

[18 All. 136

—— **28 Vict. cap. 25, s. 3.**

See HIGH COURT JURISDICTION OF — HIGH COURT, N.-W. P.—CIVIL.

[18 All. 375

—— **37 Vict. cap. 66, s. 25.**

See TRANSFER OF PROPERTY ACT, S. 132.

[21 Bom. 60

—— **37 & 38 Vict. cap. 27.**

See COURTS (COLONIAL) JURISDICTION ACT, 1874.

—— **44 & 45 Vict. cap. 41, s. 17.**

See MORTGAGE — REDEMPTION—RIGHT OF REDEMPTION.

[16 All. 295

STATUTES, CONSTRUCTION OF.

See BENGAL TENANCY ACT, ss. 15 AND 16.

[22 Calc. 337

See BOMBAY MUNICIPAL ACT, s. 248.

[20 Bom. 617

See BOMBAY REVENUE JURISDICTION ACT, s. 11.

[20 Bom. 803

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[21 Calc. 940

[22 Calc. 767

See GUARDIANS AND WARDS ACT, s. 39.

[18 Bom. 375

See JUDGE OF HIGH COURT.

[16 All. 136

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[18 Bom. 380

See SECURITY FOR COSTS—SUITS.

[21 Calc. 832

See TRANSFER OF PROPERTY ACT, s. 99.

[19 Mad. 382

1.—*Alteration in procedure—Retrospective effect of Act.*] Alterations in forms of procedure are retrospective in effect and apply to pending proceedings. HAJRAT AKRAMNISSA BEGAM *v.* VALIULNISSA BEGAM.

[18 Bom. 429

BALKRISHNA PANDHARINATH *v.* BAPU YESAJI.

[19 Bom. 204

2.—*Acts relating to procedure—Retrospective operation of Act—Dekhan Agriculturists Relief Act (XVII of 1879), s. 73—Dekhan Agriculturists Relief Act Amendment (Act VI of 1895).*] In this suit the Subordinate Judge of Karmala held that the defendant was an agriculturist, and that therefore the suit could not be maintained without a certificate under s. 47 of the Dekhan Agriculturists Relief Act (XVII of 1879). Under s. 73 of that Act the finding of the Subordinate Judge upon the point was final. The plaintiff appealed, the appeal including other points of objection to the decree as well as that with regard to the status of the defendant. Pending his appeal, Act VI of 1895 was passed, which repealed s. 73. At the hearing of the appeal the Judge considered the question of the status of the defendant, and held that he was not an agriculturist, overruling the decision of the Subordinate Judge upon that point:—*Held*, that the Judge in appeal was right in entertaining the question. The provisions of Act VI of 1895 altered the procedure and were therefore applicable to proceedings already commenced at the time of their enactment:—*Held*, also, that even if the General Clauses Act (I of 1868), s. 6, applied to Acts not conferring rights, but simply concerning judicial procedure, it could not affect the present case, as the repeal is not one

STATUTES, CONSTRUCTION OF—*continued.*

of the Act itself, but only of a section in the same relating to procedure. GANGARAM *v.* PUNAMCHAND NATHURAM.

[21 Bom. 822

3.—*Hereditary Offices Act Amendment Act (Bombay Act V of 1886), s. 2.*] Section 2 of the Hereditary Offices Act Amendment Act (Bombay Act V of 1886) is not reprospective. RAHIMKHAN *v.* FATUBIBI BINTESAHEB KHAN.

[21 Bom. 118

4.—*Penal Code (Act XLV of 1860), s. 499—English law of defamation.*] *Semble*: Section 499 of the Indian Penal Code should be construed without reference to the English law. IN RE NAGARJI TRIKAMJI.

[19 Bom. 340

5.—*Administrator-General's Act (II of 1874)—History of passing of Act—Object and reasons for Act and Report of Select Committee on Bill.*] The course of legislation with reference to the creation of the office of Administrator-General and to his duties and powers reviewed and considered in construing Act II of 1874. *Per* TREVELYAN, J.—The history of the passing of an Act, and the intention of the Legislature in introducing it, though not admissible in England to explain a Statute, have been in this country taken into consideration in construing Acts of the Legislature. *Per* PRINSEP, J.—The objects and reasons given by the Legislature on the introduction of a Bill, and the Report of the Select Committee on it, may be referred to in construing any Act to show the intention of the Legislature in passing it. *Queen-Empress* v. *Kartick Chunder Das*, I. L. R. 14 Calc. 721, referred to. ADMINISTRATOR-GENERAL OF BENGAL *v.* PREM LALL MULLICK.

[21 Calc. 732

Held, by the Privy Council on appeal, that it is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things which existed at a prior time when it first became law; the object being that the statutory law, bearing on the subject, should be collected and made applicable to the existing circumstances; nor can a positive enactment be annulled by indications of intention, at a prior time, gathered from previous legislation on the matter. Proceedings of the Legislature in passing a statute are excluded from consideration on the judicial construction of Indian, as well as of British, statutes. ADMINISTRATOR-GENERAL OF BENGAL *v.* PREMLAL MULLICK.

[22 Calc. 788

[L. R. 22 I. A. 107

6.—*Proceedings of Legislature.*] *Per* PIGOT, J.—Proceedings of the Legislature cannot be referred to as legitimate aids to the constructions of an Act. *Administrator-General of Bengal* v. *Prem Lall Mullick*, I. L. R. 22 Calc. 788; L. R. 22 I. A. 107, followed. QUEEN-EMPRESS *v.* SRI CHURN CHUNGO.

[22 Calc. 1017

STATUTES, CONSTRUCTION OF—*concluded.*

7.—*Khoti Settlement Act (Bombay Act I of 1880)—Reference to Debate on Bill in Legislative Council.*] For the purpose of construing an Act, the debate upon the Bill when before the Legislative Council is not to be referred to. GOPAL KRISHNA PARACHURE *v.* SAKHOJIRAV.

[18 Bom. 133

8.—*Marginal notes to sections of Act.*] Marginal notes are no part of an enactment. DUKHIMULLAH *v.* HALWAY.

[23 Calc. 55

9.—*Codifying. Object of.*] The object of codifying a particular branch of the law is that on any point specifically dealt with, the law should thenceforth be ascertained by interpreting the language used in that enactment, instead of, as before, searching in the authorities to discover what may be the law, as laid down in prior decisions. The language of such an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before. *Bank of England* v. *Vagliano*, L. R. 1891, A. C. 107, referred to. NORENDRA NATH SIRCAR *v.* KAMALABASINI DASI.

[23 Calc. 563
[L. R. 23 I. A. 18

STAY OF PROCEEDINGS.

See CRIMINAL PROCEEDINGS.

[18 Bom. 581
[23 Calc. 610

See INSOLVENT ACT, s. 9.

[21 Bom. 297

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.

[21 Calc. 561
[18 Bom. 65

STOLEN PROPERTY, OFFENCES RELATING TO.

1.—*Dishonestly retaining stolen property—Penal Code, s. 411—Legal presumption.*] Where a document, purporting to be a Collectorate notice forming part of a record and found by the Court to be genuine, was discovered to be in the possession of persons charged with retaining stolen property, it was held that, in a matter of this kind, it was right to raise legal presumptions arising out of the ordinary course of business and to dispense with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be convicted of receiving stolen property knowing it to be stolen, it must be shown that property has been stolen, *held*, that the disappearance of the document from the record *plus* the substitution of an imitation of it in its place, showed that it must have been taken with a dishonest object. ISHAN CHANDRA CHANDRA *v.* QUEEN-EMPRESS.

[21 Calc. 328

STOLEN PROPERTY, OFFENCES RELATING TO—*concluded.*

2.—*Penal Code (Act XLV of 1860), s. 411—Evidence—Pointing out stolen property concealed in a place not under the accused's control.*] Where the sole evidence against a person charged with an offence under s. 411 of the Penal Code consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person:—*Held*, that this was not in itself sufficient evidence to support a conviction under the abovementioned section. QUEEN-EMPRESS *v.* GOBINDA.

[17 All. 576

3.—*Fraudulent possession of property reasonably suspected of being stolen—Police Act (XIII of 1856), s. 35, cl. (1)—Duty of the prosecution to prove to the satisfaction of the Court that there exist reasonable grounds of suspicion—Onus of proof.*] A person cannot be called on to account for his possession of property under s. 35, cl. (1) of the Police Act (XIII of 1856), unless there is evidence which satisfies, not the Police-officer, but the Court, after judicial consideration, that such property "may be reasonably suspected of being stolen or fraudulently obtained." QUEEN-EMPRESS *v.* DHANJIBHAI EDULJI.

[20 Bom. 348

STRIDHAN.

See CASES UNDER HINDU LAW—STRIDHAN.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[19 All. 133

STRIKING OFF EXECUTION PROCEEDINGS.

See ATTACHMENT—STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT.

[19 All. 482

See EXECUTION OF DECREE—STRIKING OFF EXECUTION PROCEEDINGS.

[18 All. 49

"SUBORDINATE COURT," MEANING OF.

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[22 Calc. 487

SUBORDINATE JUDGE, JURISDICTION OF.

See APPEAL—ORDERS.

[22 Calc. 830

See COMPANIES ACT, s. 130.

[17 All. 252

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 4.

[19 Bom. 46

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[18 Bom. 224

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, &C.

[18 Bom. 61

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[21 Bom. 45

See PLAINT—RETURN OF PLAINT.

[20 Bom. 675

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[21 Bom. 48

See SUPERINTENDENCE OF HIGH COURT —BOMBAY REGULATION II OF 1827.

[20 Bom. 50

1.—*N.-W. P. Rent Act (XII of* 1881), *ss.* 93, 206, 107 *and* 208 – *Bengal, N.-W. P. and Assam Civil Courts Act (XII of* 1887), *s.* 22, *cl.* 3—*Transfer of appeal in a Rent Court suit from the District Judge to the Subordinate Judge—Powers exercisable by the Subordinate Judge.*] Clause (3) of s. 22 of Act XII of 1887 makes ss. 206, 207 and 208 of Act XII of 1881 applicable to appeals in suits within s. 93 of Act XII of 1881 when such appeals have been transferred under s. 22 of Act XII of 1887 by a District Judge to a Subordinate Judge and are being heard by such Subordinate Judge. NANDAN PRASAD *v.* CHANGUR.

[16 All. 363

2.—*Bombay Civil Courts Act (XIV of* 1869), *s.* 32, *as amended by the Bombay Revenue Jurisdiction Act (X of* 1876) *s.* 15, *and by Bombay Act XV of* 1880, *s.* 3 — *Bombay Regulation II of* 1827, *s.* 43 — *Suit against officer of Government—Acts done by the defendant in his official capacity—Civil Procedure Code* (1882), *s.* 424.] On the death of the *talukdar* of Kerwada leaving a widow and minor son, the Mamlatdar of Amod, acting under the order of the Collector of Broach, entered the *talukdar's* house, made an inventory of the moveables, took possession of the property of the deceased, and locked up some of the rooms. Among the property seized (it was alleged) was certain property belonging to the widow. She brought this suit against the Collector and Mamlatdar, claiming damages for these wrongful acts. The suit was filed in the Court of the Subordinate Judge:—*Held*, that the acts complained of were done by the defendants in their official capacity, and that under s. 32 of the Bombay Civil Courts Act (XIV of 1869) the Subordinate Judge had no jurisdiction to entertain the suit. ALLEN *v.* BAI SHRI DARIABA.

[21 Bom. 754

SUBORDINATE JUDGE, JURISDICTION OF—*concluded.*

3.—*Patil and kulkarni of village—Impressment of bullocks by patil and kulkarni of village for use of Government officer—Suit for damages for acts done by officer of Government in official capacity —Bombay Revenue Jurisdiction Act (X of* 1876), *s.* 15—*Bombay Civil Courts Act (XIV of* 1869), *s.* 32—*Bombay Regulation IV of* 1818, *s.* 52.] The *patil* and *kulkarni* of a village having impressed a pair of bullocks belonging to the plaintiff for the use of an abkari inspector, the plaintiff sued them for damages in the Court of a Subordinate Judge. The defendants pleaded (*inter alia*) that the Subordinate Judge had no jurisdiction to try the suit under the Bombay Revenue Jurisdiction Act (X of 1876):—*Held*, that the suit was properly instituted in the Court of the Subordinate Judge, as the defendants were sued in their private capacity. It is not clear that the rules about impressment of carts found in Chap. I of Nairne's Revenue Handbook actually order the village *patil* to impress carts against the owner's will: neither is it clear what officers are to be supplied. There is nothing to show that any law ever imposed this duty on a *kulkarni*, or that provision was made after the repeal of the Regulation of 1818 as regards *patils* except for military bodies. BUDHO *v.* KESO.

[21 Bom. 773

SUBSTANTIAL INJURY.

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[19 Bom. 276

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[21 Calc. 66
[L. R. 20 I. A. 176
[18 All. 37, 141
[24 Calc. 291
[20 Mad. 159

SUCCESSION.

See HINDU LAW—INHERITANCE.

See MAHOMEDAN LAW—INHERITANCE.

See MALABAR LAW—INHERITANCE.

See OUDE ESTATES ACT, S. 22.

[21 Calc. 997
[L. R. 21 I. A. 163

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL.

[21 Calc. 997
[L. R. 21 I. A. 163

SUCCESSION—*concluded.*

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

—— **to permanent tenure.**

See BENGAL TENANCY ACT, S. 16.

[24 Calc. 241

SUCCESSION ACT (X OF 1865).

See ADMINISTRATOR-GENERALS ACT, S. 31.

[21 Calc. 732
[22 Calc. 788
[L. R. 22 I. A. 107

See CONVERTS.

[20 Bom. 53

——, **s. 2.**

See S. 331.

[19 Bom. 783

——, **s. 4 and s. 44.**—*Marriage—Husband and wife—Domicile—Succession to property.*] A person with an English domicile marrying a wife with an Indian domicile is, on her death, entitled to inherit the whole of her moveable property to the exclusion of the next of kin. Sections 4 and 44 of the Succession Act do not affect the law of succession, but relate to the immediate effect of marriage on moveable property belonging to either of the married persons, and not comprised in an ante-nuptial settlement. HILL *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[23 Calc. 506

——, **s. 50.**

See WILL—ATTESTATION.

[20 Bom. 674

——, **s. 82.**

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[24 Calc. 646

——, **s. 101.**

See PERPETUITIES, RULE AGAINST.

[20 Bom. 511

——, **ss. 101 and 102.**

See HINDU LAW — WILL — CONSTRUCTION OF WILLS.

[20 Bom. 450

——, **s. 111.**

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[23 Calc. 563
[L. R. 23 I. A. 18
[24 Calc. 406

——, **s. 125.**

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[24 Calc. 406

SUCCESSION ACT (X OF 1865)—*concld.*

——, **s. 159.**

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[20 Bom. 450

——, **s. 190.**

See LETTERS OF ADMINISTRATION.

[19 Bom. 828

See RIGHT OF SUIT—INTESTACY.

[18 Bom. 637

——, **s. 195.**

See LETTERS OF ADMINISTRATION.

[19 Bom. 123

——, **s. 255.**

See EXECUTOR.

[21 Bom. 400

——, **s. 261.**

See PROBATE—APPLICATION FOR PROBATE.

[19 Mad. 458

——, **s. 266.**

See RIGHT OF SUIT—INTESTACY.

[18 Bom. 337

——, **s. 269.**

See LETTERS OF ADMINISTRATION.

[23 Calc. 579

——, **s. 331 and s. 2.**—*Converts to Christianity from Hinduism—Inheritance—Evidence of custom of inheritance—Koli caste of fishermen.*] The Indian Succession Act (X of 1865) and the rules of inheritance prescribed by it, apply to Hindus who have become Christians; and evidence to show that they and the community to which they belong have retained the Hindu custom of inheritance, is inadmissible. DAGREE *v.* PACOTTI SAN JAO.

[19 Bom. 783

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See CASES UNDER CERTIFICATE OF ADMINISTRATION.

——, **s. 4.**

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—GENERALLY.

[20 Bom. 76

——, **s. 6.**

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[19 Mad. 199

——, **s. 9.**

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[19 Bom. 790
[20 Mad. 442

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*concluded.*

——, s. 10.

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[20 Mad. 442

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.

[19 Bom. 790

——, s. 17.

See COURT-FEES ACT, s. 26.

[19 Bom. 145

——, s. 19.

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[18 Bom. 748
[19 Bom. 399, 790
[19 Mad. 199

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[17 Mad. 167

——, s. 26.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[17 Mad. 167

——, s. 28.

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[18 Bom. 748
[19 Bom. 399

SUIT.

See COURT-FEES ACT, s. 11.

[24 Calc. 173

——, Institution of.

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 4.

[19 Bom. 46

See LIMITATION ACT, s. 4.

[19 Bom. 320
[17 All. 526
[20 Bom. 508
[20 Mad. 319

——, Institution of, Order staying.

See LIMITATION ACT, s. 15.

[17 All. 198
[L. R. 22 I. A. 31

——, Proceedings in.

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[20 Bom. 198

See PLEADER — APPOINTMENT AND APPEARANCE.

[20 Bom. 198

SUIT—*concluded.*

——, Revival of.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[23 Calc. 912

——, Title of.

See PRACTICE — CIVIL CASES — PARTY ATTAINING MAJORITY.

[22 Calc. 270

——, Suits filed on same day.

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

[16 All. 165

SUITS VALUATION ACT (VII OF 1887).

See CASES UNDER VALUATION OF SUIT.

——, s. 8.

See MUNSIF, JURISDICTION OF.

[19 Mad. 56

——, s. 11.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[18 Mad. 418

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[18 Mad. 418

SUMMARY SUIT, CROSS CLAIM IN.

See COMPENSATION—CIVIL CASES.

[18 Bom. 717

SUMMARY TRIAL.

See CATTLE TRESPASS ACT, s. 20.

[23 Calc. 248

SUMMONS.

—— in chambers.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

[19 Bom. 88

——, Issue of.

See PARDANASHIN WOMEN.

[21 Calc. 588

—Mistake in summons—Amendment of summons at hearing — Practice.] The defendant was manager of a joint Hindu family carrying on business in Bombay, Madras, and other places. In a suit in the High Court of Bombay against him as such manager, a decree was passed on the 11th April, 1896, in execution of which on the same day certain property, in which the joint family was interested, was attached. On the 9th April, 1896, however, the defendant had been adjudged an insolvent by the Insolvent Court at Madras under s. 9 of the Insolvent Act. On the 6th May, 1896, the Official Assignee, Bombay, took

SUMMONS—*concluded.*

out a summons to have the attachment removed. By mistake the summons in this case purported to be taken out by the Official Assignee of Bombay, omitting to describe him as constituted attorney of the Official Assignee of Madras:—*Held*, that the summons might be amended at the hearing by substituting the name of the Official Assignee of Madras and disposed of on that basis. SARDAMAL JAGONATH *v.* ARANVAYAL SABHAPATHY MOODLIAR.

[21 Bom. 205

SUMMONS, SERVICE OF.

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.

[18 Bom. 606

See TRANSFER OF PROPERTY ACT, s. 132.

[21 Bom. 60

——, Date of service.

See LIMITATION ACT, ART. 159.

[23 Calc. 573

1.—*Summons transmitted to local Court for service—Question of sufficiency or otherwise of service of summons—Civil Procedure Code* (1882), *s.* 85—*Practice.*] When a summons is issued by one Court to persons resident outside its jurisdiction, and is sent to another Court for service to be effected, it is for the Court from which the summons originally issued to determine whether the service of summons by the Court to which it has been sent for service is sufficient or not. *Nusur Mahomed* v. *Kazbai*, I. L. R. 10 Bom. 202, distinguished. ROMANATH BURAL *v.* GUGGODONANDAN SEN.

[22 Calc. 889

2.—*House service—Civil Procedure Code* (1882), *ss.* 80—82—*Practice.*] Where a defendant is temporarily absent from home, and is not represented at his house by an agent or male member of his family, a Judge is not justified in treating the fixing of a summons to his door as due service. The summons should be again sent to the defendant's house to be served upon him when the inquiries made show that he is likely to be at home and to be found there. The Civil Procedure Code (Act XIV of 1882) in the matter of the service of a summons does not take into account the female members of a defendant's family, and does not rely upon the presumption that they will take steps to inform the defendant of what takes place in his absence. BHOMSHETTI JINAPPASHETTI *v.* UMABAI.

[21 Bom. 223

3.—*Service by post—Return through the post of packet containing the summons endorsed "refused" —Civil Procedure Code* (1882), *s.* 82.] A Small Cause Court having forwarded the summons to the defendant in a registered packet through the Post Office, the packet was returned endorsed "refused;" the Small Cause Court held the service of the summons to be good service and passed an *ex-parte* decree against the defendant:—*Held*, that the delivery of the summons by the post to a person who was not shown to be the defendant, was not good service. JAGANNATH BRAKHBHAU *v.* SASSOON.

[18 Bom. 606

SUMMONS, SERVICE OF—*concluded.*

SUPERINTENDENCE OF HIGH COURT.

Col.

1. Bombay Regulation II of 1827 ...1241
2. Charter Act (24 and 25 Vict. cap. 104), s. 15 ...1241
3. Civil Procedure Code, s. 622 ...1241

See APPEAL—ORDERS.

[19 Mad. 167

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[22 Calc. 767

See GUARDIANS AND WARDS ACT, 1890, s. 1.

[18 Mad. 227

See HIGH COURT JURISDICTION OF — HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 480

See LUNATIC.

[24 Calc. 133

See MAMLATDAR, JURISDICTION OF.

[21 Bom. 775

See MAMLATDARS COURTS ACT, S. 17.

[19 Bom. 675

See MUNSIF, JURISDICTION OF.

[20 Mad. 155

See REVIEW—POWER TO REVIEW.

[19 Bom. 113, 116

See REVISION — CIVIL CASES — SMALL CAUSE COURT CASES.

[16 All. 476
[17 All. 422
[21 Bom. 250

See SALE IN EXECUTION OF DECREE— SETTING ASIDE SALE—IRREGULARITY.

[22 Calc. 802

See SALE IN EXECUTION OF DECREE— SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[18 Bom. 594

See SMALL CAUSE COURT, MOFUSSIL— JURISDICTION—COMPENSATION FOR ACQUISITION OF LAND.

[20 Mad. 155

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 776

SUPERINTENDENCE OF HIGH COURT—*continued.*

(1) BOMBAY REGULATION II OF 1827.

1.—*Plaint, Presentation of—Return of plaint for presentation to proper Court—Jurisdiction of Subordinate Judge—High Court, Power of, to interfere under Bombay Regulation II of* 1827, *s.* 5, *cl.* 2.] A second class Subordinate Judge returned a plaint for presentation in the proper Court on the ground that the subject-matter exceeded his pecuniary jurisdiction. The first class Subordinate Judge to whom the plaint was then presented, also returned it for presentation in the proper Court on the ground that the subject-matter was below his pecuniary jurisdiction. The plaintiff thereupon presented the plaint to the successor of the second class Subordinate Judge who had originally returned the plaint. That Judge held that he had no jurisdiction to review the order passed by his predecessor. The plaintiff appealed, and the Judge rejected the appeal, holding that no appeal lay against an order refusing to grant a review. The plaintiff applied to the High Court under its extraordinary jurisdiction :—*Held*, that the case was one in which the High Court ought to interfere under cl. 2, s. 5 of Bombay Regulation II of 1827. The order of the second class Subordinate Judge was set aside with a direction that he should admit the plaint as of the date of its original presentation. GIRDHARLAL HARGOVANDAS *v.* LALLU JAGJIVAN.

[20 Bom. 50

(2) CHARTER ACT (24 & 25 VICT. CAP. 104), S. 15.

2.—*Civil Procedure Code* (1882), *s.* 622—*Failure of duty by a Subordinate Court.*] Where a Subordinate Court had signally failed to do its duty, and there had been no patent neglect on the part of the petitioner :—*Held*, on an application for revision, that it is competent for the High Court under the general powers of supervision vested in it by s. 15 of 24 and 25 Vict. cap. 104, to direct the Subordinate Court to do its duty, and complete the case according to law. *Muhammad Suleman Khan* v. *Fatima*, I. L. R. 9 All. 104, referred to. ABDULLAH *v.* SALARU.

[18 All. 4

(3) CIVIL PROCEDURE CODE, S. 622.

3.—*Application and purpose of s.* 622—*Civil Procedure Code* (1882), *s.* 591 — *Interlocutory orders.*] An application under s. 622 of the Civil Procedure Code cannot be entertained in the case of those interlocutory orders against which, though no immediate appeal lies, a remedy is supplied by s. 591, which provides that they may be made a ground of objection in the appeal against the final decree. The purpose with which s. 622 was framed was to enable a party to a suit to get a decision or order of a lower Court rectified by the High Court where there would otherwise be no remedy. MOTILAL KASHIBHAI *v.* NANA.

[18 Bom. 35

4.—*Exercise of revisional powers when there was remedy by separate suit—Right of suit—Executing Court delivering possession of property not specified in sale certificate.*] In execution of a decree against several joint judgment-debtors certain immoveable property was proclaimed for sale. The sale-proclamation described the property as so many *biswas* and *biswansis* in certain villages amounting to a certain area. The judgment-debtors possessed property in those villages over and above that sought to be sold. The property as above described was sold, and certificates of sale were granted which in terms followed the description contained in the proclamation of sale. The decree-holders purchased the property so sold and applied for possession thereof, but in their application they inserted a detail of the specific shares of property held by the several judgment-debtors over which they prayed for possession. The Court executing the decree went into the question of the specification of shares and ordered possession to be delivered over certain specific shares of the several judgment-debtors :—*Held* that, under the circumstances described above, the High Court would interfere in revision under s. 622 of the Code of Civil Procedure, although it was possible that the matters complained of might be grounds for a separate suit. *Guise* v. *Jaisraj*, I. L. R. 15 All. 405 ; *Gopal Das* v. *Alaf Khan*, I. L. R. 11 All. 383 ; and *Prosunno Kumar Sanyal* v. *Kali Das Sanyal*, I. L. R. 19 Calc. 663, referred to. GHULAM SHABBIR *v.* DWARKA PRASAD.

[18 All. 163

5.—*Transfer of execution-proceedings from one Subordinate Court to another—Discretion of Court.*] The High Court will not in its extraordinary jurisdiction interfere, except under circumstances of a very special nature, with the discretion of a Judge who has transferred execution proceedings under a decree from one Subordinate Court to another. KRISHNA VELJI MARWADI *v.* BHAU MANSARAM.

[18 Bom. 61

6.—*Special Judge, Discretion of—Dekhan Agriculturists Relief Act* (*XVII of* 1879)—*Finding of fact.*] When the Special Judge under the Dekhan Agriculturists Relief Act (XVII of 1879) entertains a clear opinion that the findings of the Subordinate Judge on the questions of fact are erroneous, and exercises his discretion in setting aside the decree, the High Court will not, in its extraordinary jurisdiction, interfere with that discretion except under most exceptional circumstances. RAYACHAND MAYACHAND *v.* RAHIMBHAI.

[18 Bom. 347

7.—*Revisionary power of the Special Judge—Cases in which failure of justice appears to have taken place—Jurisdiction—Discretion of Court—Dekhan Agriculturists Relief Act, s.* 53.] Section 622 of the Civil Procedure Code (Act XIV of 1882) gives to the High Court jurisdiction to interfere only where the lower Court acts without jurisdiction or has exercised its jurisdiction "illegally or with material irregularity." Under s. 53 of the Dekhan Agriculturists Relief Act (XVII of

SUPERINTENDENCE OF HIGH COURT—*continued.*

(3) CIVIL PROCEDURE CODE, S. 622—*contd.*

1879) the Special Judge has a revisionary power in all cases where a failure of justice appears to have taken place. It is for him to decide whether the finding on a question of fact by a Subordinate Judge is of that nature, and in doing so he is entirely within his jurisdiction. *Shidhu* v. *Bali*, I. L. R. 15 Bom. 180, dissented from. GURUBASAYA *v.* CHANMALAPPA.

[19 Bom. 286

8.—*High Court's power of interference with order of Special Judge—Rules under Bengal Tenancy Act, Chap. VI, No.* 25—*Power of Local Government to make the rule—Bengal Tenancy Act, ss.* 104, 108 *and* 189.] A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2 of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue Officer's decision making all or nearly all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of Rs. 10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code:—*Held* by a Full Bench (1) That the Special Judge refused to exercise a jurisdiction vested in him by law; that the Court of the Special Judge is a Court subordinate to the High Court; and the High Court had power to interfere under s. 622 of the Civil Procedure Code. *Shewbarat Koer* v. *Nirpat Roy*, I. L. R. 16 Calc. 596, dissented from. (2) That the Local Government acted within the powers conferred by s. 189, cl. 1 of the Bengal Tenancy Act, in making rule 25 of Chap. VI of the Government rules under the Act, by which a landlord is authorised to join as defendants several tenants in one application for settlement of rents. UPADHYA THAKUR *v.* PERSIDH SINGH.

[23 Calc. 723

9.—*Refraining from exercise of jurisdiction—Special Judge acting under Bengal Tenancy Act (VIII of* 1885), *ss.* 106 *and* 108—*Boundary dispute—Decision of Settlement Officer acting as Survey Officer under Bengal Survey Act (Bengal Act V of* 1875).] Where the Special Judge under the Bengal Tenancy Act (VIII of 1885), in a case of a boundary dispute which had been tried and decided by a Settlement Officer acting as a Survey Officer under Part V of the Bengal Survey Act (V of 1875), dismissed an appeal on the ground that no appeal lay to him in such a case, the High Court declined to interfere under s. 622 of the Civil Procedure Code, being of opinion that the Settlement Officer had power under s. 189 (*b*) of the Bengal Tenancy Act, and Rule 1, Chap. VI of the Government rules under the Tenancy Act to act as he had done, and that therefore in holding that no appeal lay to him, the Special Judge had not refrained from exercising any jurisdiction which he ought to have exercised. IRSHAD ALI CHOWDHRY *v.* KANTA PERSHAD HAZAREE.

[21 Calc. 935

SUPERINTENDENCE OF HIGH COURT—*continued.*

(3) CIVIL PROCEDURE CODE, S. 622—*contd.*

10.—*Madras Rent Recovery Act (Madras Act VIII of* 1865), *s.* 76.] Orders passed by a Collector under the Madras Rent Recovery Act are not open to revision under s. 622 of the Civil Procedure Code. *Velli Periya Mira* v. *Moidin Padsha*, I. L. R. 9 Mad. 332, followed. VENKATANARASIMHA NAIDU *v.* SURANNA.

[17 Mad. 298

11.—*Pauper suit—Costs of plaintiff—Right of appeal — Decree omitting to order plaintiff to pay Court-fees—Power of Collector to apply under the extraordinary jurisdiction of High Court—Amendment of decree.*] The plaintiff's suit *in formâ pauperis* was rejected by the Subordinate Judge. The decree, however, omitted to order the recovery from the plaintiff of the Court-fees payable in the plaint. The Collector applied to the High Court under its extraordinary jurisdiction for the rectification of the decree. It was contended that, as the omission might have been remedied by an appeal or on review, the Collector could not apply under the extraordinary jurisdiction of the Court:—*Held*, on the authority of *The Collector of Ratnagiri* v. *Janardan*, I. L. R. 6 Bom. 590, that no appeal by Government would lie in the case, and that, in the exercise of its extraordinary jurisdiction, the High Court would rectify the decree by directing the plaintiff to pay the costs of Government. COLLECTOR OF KANARA *v.* RAMBHAT.

[18 Bom. 454

12.—*Exercise of power of High Court under s.* 622 *of the Civil Procedure Code,* 1882, *where there is no appeal—Order refusing to make person party to oppose probate.*] Where a Hindu died leaving a widow, and also a daughter (who alleged collusion between the widow and one of the executors applying for probate of an alleged will) the daughter was held to have sufficient interest to entitle her to be made a party to the application and to oppose the grant of probate; and the Judge having refused to make her a party, the Court, finding that no appeal lay from that order, thought it a proper case for the exercise of its power under s. 622 of the Civil Procedure Code, and remanded the case for trial as a contested application. KHETTRAMONI DASI *v.* SHAYAMA CHURN KUNDU.

[21 Calc. 539

13.—*Sale in execution of decree set aside—Material irregularity—Inadequacy of price—Exercise of jurisdiction by District Judge.*] A judgment-debtor applied to have a sale in execution of a decree set aside on the ground that the sale-proclamation had not been duly published, and that it referred to only 5 *bighas* instead of some 70, the actual amount, and that in consequence thereof a grossly inadequate price had been obtained for the property. The Munsif found these allegations to be proved and set aside the sale. On appeal the District Judge, while agreeing with the Munsif as to these findings, held that there was no proof that the inadequacy of price

SUPERINTENDENCE OF HIGH COURT—*continued.*

(3) CIVIL PROCEDURE CODE, S. 622—*contd.*

was due to irregularities alleged and proved, and that such could not be presumed. He accordingly reversed the Munsif's order. The judgment-debtor, having appealed to the High Court against the order of the District Judge, and failed in such appeal by reason of no second appeal lying from such order, applied to the High Court under the provisions of s. 622 of the Code to have the order set aside:—*Held*, that the District Judge having full jurisdiction to determine whether the sale was good or bad, it was impossible to say that, in arriving at the decision he did, he either acted without jurisdiction or illegally in the exercise of his jurisdiction, and that the High Court could not therefore interfere with the order under that section. GOPI KOERI *v.* GOPI LAL.

[21 Calc. 799

14.—*Judge of Small Cause Court erroneously treating defective service of summons as good—Material irregularity.*] Where a Judge of the Small Cause Court, Bombay, treated the delivery of a summons by post to a person who was not shown to be the defendant, as good service and had passed a decree against the defendant, he was held to have acted with material irregularity, and the High Court reversed his decree in the exercise of their powers under s. 622 of the Civil Procedure Code. JAGANNATH BRAKHBHAU *v.* SASSOON

[18 Bom. 606

15.—*Decision on unstamped hundis.*] Where a Judge acted on *hundis* which were unstamped and therefore inadmissible in evidence, the High Court set aside his decision under s. 622 of the Civil Procedure Code. CHENBASAPA *v.* LAKSHMAN RAMCHANDRA.

[18 Bom. 369

16.—*Decision on inadmissible evidence.*] A decision taking into consideration as evidence an unregistered lease was set aside under s. 622. GURUNATH SHRINIVAS DESAI *v.* CHENBASAPPA.

[18 Bom. 745

17.—*Construction of document.*] The fact that a Court has misunderstood the effect of a document in evidence, does not constitute a ground upon which the High Court can interfere in revision under s. 622 of the Code of Civil Procedure. DASRATH RAI *v.* SHEODIN RAI.

[16 All. 39

18.—*Allowing objection to application in execution of decree by person not party to decree—Failure of exercise of jurisdiction vested by law—Decree against wrong person as representative.*] A person, not a party to a suit, is not entitled to object to the issue of an order for execution of the decree. A Judge having at the instance of a person not a party to a suit refused to pass an order for the execution of decree on the judgment-creditor's application:—*Held*, that in omitting to make such an order, the Judge failed

SUPERINTENDENCE OF HIGH COURT—*continued.*

(3) CIVIL PROCEDURE CODE, S. 622—*contd.*

to exercise a jurisdiction vested in him by law, and that s. 622 of the Civil Procedure Code (Act XIV of 1882) was therefore applicable. NATHUBHAI MULCHAND *v.* NANA BABU.

[19 Bom. 544

19.—*Dismissal of appeal "for default of prosecution," appellant and his pleaders being present—Refusal to reinstate appeal—Civil Procedure Code* (1882), *ss.* 556 *and* 558—*Appeal from order rejecting appeal.*] A civil appeal was being heard before a Subordinate Judge, the appellant and two pleaders on his behalf being present. During the argument one of the pleaders was called away to another Court and remained absent, and as neither the other pleader nor the appellant was in a position to continue the argument, the Subordinate Judge passed an order, purporting to be under s. 556 of the Code of Civil Procedure, dismissing the appeal "for default of prosecution." An application under s. 558 to reinstate the appeal was rejected. The appellant appealed under s. 588 to the High Court against the order under s. 558:—*Held*, that no such appeal lay, as the order in question could not have been made under s. 556. But the appellant was allowed to apply in revision under s. 622 against the order under s. 556, and upon that application it was held that the Court below had acted illegally and with material irregularity in dismissing the appeal for default under s. 556. JAWAHIR SINGH *v.* DEBI SINGH.

[18 All. 119

20.—*Land Acquisition Act* (*X of* 1870), *ss.* 3, 24 *and* 25—*Exercise of jurisdiction by Judge under the Act—"Material irregularity"—Mistake in regard to the principle of calculation of the value of the land acquired.*] If a Judge and assessors, sitting to determine the amount of compensation to be awarded for land acquired under the Land Acquisition Act of 1870, have refused to take into consideration any of the matters prescribed by s. 24 of that Act, or have improperly taken into consideration any of the matters prohibited by s. 25 thereof, such procedure would amount to material irregularity in the exercise of their jurisdiction, and would justify the intervention of the High Court under s. 622 of the Code of Civil Procedure. Having regard to the definition of "land" contained in s. 3 of Act X of 1876, there is nothing illegal in a Judge taking into account the value of works on the land which make it suitable for a salt factory; and even if, in making his estimate of the market value of the land, he took into consideration the price paid for neighbouring pans, and was in error in so doing, his mistake would be only one concerning the principles of valuation and not an irregularity in the exercise of jurisdiction. JOSEPH *v.* SALT CO.

[17 Mad. 371

21.—*Power to call for record of cases not appealable to High Court—When a Court can be said "to have acted in the exercise of its jurisdiction*

SUPERINTENDENCE OF HIGH COURT—*continued.*

(3) CIVIL PROCEDURE CODE, S. 622—*contd.*

illegally or with material irregularity."] A District Judge disposed of some suits on a point taken by himself on appeal, without affording the parties an opportunity of proving what was necessary to meet the point, and admitted other appeals after they had become time-barred:—*Held*, by the majority of the Full Bench, that where a Subordinate Court, having applied its mind to a question of law or procedure, arrives at an erroneous decision, such decision is not by itself any ground for the exercise by a High Court of the powers given by s. 622 of the Code of Civil Procedure. *Amir Hassan Khan* v. *Sheo Baksh Singh*, I. L. R. 11 Calc. 6, followed:—*Held*, further (BEST and DAVIES, JJ., dissenting), that the case contemplated by the words "act . . . illegally or with material irregularity" in s. 622 of the Code of Civil Procedure is that of a perverse decision on a question or law or procedure, a decision being perverse where it is a conscious departure from some rule of law or procedure. *Per* BEST, J.—The words in question of s. 622 of the Code are applicable to illegalities or irregularities which are the result merely of ignorance of law or carelessness, and the disposal of a suit on a point taken by the Court itself on appeal, without affording the parties an opportunity of proving what is necessary to meet the point, is an irregularity in procedure within the meaning of s. 622; and that the inadvertent admission of an appeal that is time-barred is an illegality in procedure within the meaning of that section. *Per* DAVIES, J.—The clause of s. 622 in question is applicable only to errors of procedure, and it is not in every case that the High Court would in the exercise of the discretionary power granted it by the section, interfere in revision. The interference would be confined to cases where the illegality or irregularity was such as had occasioned or might occasion a substantial failure of justice, as in the present case. KRISTAMMA NAIDU *v.* CHAPA NAIDU.

[17 Mad. 410

22.—*Succession Certificate Act (VII of 1889), s. 9—Order granting certificate on the applicant's furnishing security—Discretion of Court.*] The widow of a deceased person having applied for a certificate under the Succession Certificate Act (VII of 1889), the Judge ordered the certificate to issue on the applicant's furnishing security under s. 9 of the Act:—*Held*, that such an order was within the discretion of the Judge, and there being shewn to be nothing improper in the exercise by the Judge of his jurisdiction, the Court refused to interfere to set the order for security aside. *Mhalsabai* v. *Vithoba Khandappa Gulbe*, 7 Bom. Ap. 26, referred to. BAI DEVKORE *v.* LALCHAND JIVANDAS.

[19 Bom. 790

23.—*Mamlatdars Courts Act (Bombay Act III of 1876), s. 15, cl. (a), sub-clauses (1) and (2). s. 18—Execution of decree for possession against a third party—Jurisdiction of Mamlatdar.*] *A* obtained an order in a Mamlatdar's Court against *G* for possession of a house, and in execution *N*, who was found in possession of the house, and who was reported by the village officers as holding possession for *G*, was evicted by order of the Mamlatdar. *N* then applied to the High Court:—*Held*, that the Mamlatdar's order was, strictly speaking, beyond his authority, but that as *N's* petition to the High Court contained no distinct denial that he was occupying merely on behalf of the defendant, the High Court would not interfere in its extraordinary jurisdiction. NATHEKHA *v.* ABDUL ALLI.

[18 Bom. 449

24.—*Irregular decree of Mamlatdar made by consent of parties—Subsequent refusal by Mamlatdar to order execution of decree—Questions of fact.*] The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in these suits, that unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant thereupon applied to the High Court in its extraordinary jurisdiction and alleged that the money had not been duly tendered:—*Held*, that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so:—*Held*, also, that the High Court would not go into the question as to the due tender of the money. It was not open to the High Court, in the exercise of its extraordinary jurisdiction, to go into this question of fact, nor would it be proper to further the execution of an irregular decree, especially as the applicant had a clear remedy by suit. RAMRAO TATYAJI PATIL *v.* BABAJI DHONDJI BIBVE.

[20 Bom. 630

25.—*Mamlatdar, Jurisdiction of.*] The plaintiff sued in a Mamlatdar's Court for possession of certain lands, alleging that the defendants held them under a lease, the time of which had expired. The Mamlatdar found the execution of the lease proved, but held it to be colourable, and that the defendants did not hold under it. He therefore rejected the plaintiff's claim. The plaintiff applied to the High Court in its extraordinary jurisdiction and obtained a rule to set aside the order, contending that the Mamlatdar had no jurisdiction to decide that the lease was colourable, and that he ought not to have admitted evidence upon that point:—*Held* (discharging the rule) that the matter was not one for the extraordinary jurisdiction of the High Court under

SUPERINTENDENCE OF HIGH COURT—*concluded.*

(3) CIVIL PROCEDURE CODE, S. 622—*concld.*

s. 622 of the Civil Procedure Code (Act XIV of 1882). The Mamlatdar had not declined jurisdiction. He had considered the materials laid before him and had come to a conclusion. That conclusion, if erroneous, ought to be corrected in a regular suit and not by an application to the High Court under s. 622 of the Civil Procedure Code (Act XIV of 1882). KASHINATH SAKHARAM KULKARNI *v.* NANA.

[21 Bom. 731

26.—*Dispossession of a third person not a party to suit—Remedy of person so dispossessed—Mamlatdar acting without jurisdiction.*] *G* got a decree for possession against *P*, in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of *P*, who was in possession, and who was not a party to the decree:—*Held*, that the Mamlatdar's order for the execution of the decree by the ouster of *P* was without jurisdiction, and that it should be set aside under s. 622 of the Civil Procedure Code (Act XIV of 1882). CHINAYA *v.* GANGAVA.

[21 Bom. 775

27.—*Order of District Judge acting under Bombay District Municipal Act (Bombay Act II of 1884), s. 23—Application to set aside a municipal election—Order made as to costs—"Court," Meaning of.*] A District Judge acting under s. 23 of the Bombay District Municipal Act (Bombay Act II of 1884), is not a "Court" within the meaning of the word in s. 622 of the Civil Procedure Code (Act XIV of 1882), and the High Court has no jurisdiction to revise his order refusing to set aside an election, nor can it interfere with an order made by him that the applicant shall pay the costs incurred by the opponent. BALAJI SAKHARAM *v.* MERWANJI NOWROJI.

[21 Bom. 279

28.—*Order for possession on application by usufructuary mortgagee ejected by auction-purchaser to be restored to possession—Civil Procedure Code (1882) s. 335.*] In a suit for sale upon a mortgage the plaintiff having obtained a decree assigned the same, and the assignee brought the property decreed to be sold to sale and purchased it himself and obtained possession. A usufructuary mortgagee of the property who had been a party to the suit, and in whose favour the decree was, in so far that it declared his right to continue in possession, applied to be restored to possession and obtained an order in his favour. Thereupon the assignee, auction-purchaser, applied in revision to have the order restoring the usufructuary mortgagee to possession set aside:—*Held*, that the order in question was an order which could properly be made under s. 335 of the Code of Civil Procedure, and, being unappealable, an application for revision thereof might lie. See *Sheoraj Singh* v. *Banwari Das*, I. L. R. 6 All. 172. SABHAJIT *v.* SRI GOPAL.

[17 All. 222

SUPPLEMENTAL SUIT, REMEDY BY.

See COSTS—SPECIAL CASES—PARTITION.

[21 Calc. 904

SURETY.

Col.

1. Liability of Surety ...1250
2. Enforcement of Security ...1250

——for guardian of minor's estate.

See MINOR—BOMBAY MINORS ACT (XX OF 1864).

[19 Bom. 245

——, Liability of.

See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL & SURETY.

[19 Bom. 578

——, Revocation of.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

[19 Mad. 140

(1) LIABILITY OF SURETY.

1.—*Civil Procedure Code* (1882), *s.* 336—*Bond for production of insolvent judgment-debtor—Conditions in bond unprovided for by s.* 336.] Where in a bond under s. 336 of the Code of Civil Procedure, besides the usual covenants to produce the judgment-debtor before the Court, and that the judgment-debtor would apply to be declared an insolvent, further stipulations were contained as to what should happen if the judgment-debtor's application to be declared insolvent were refused, it was *held* that the latter stipulations were not such as were contemplated by s. 336 and could not be enforced under that section. JANKI DAS *v.* RAM PARTAB.

[16 All. 37

2.—*Civil Procedure Code* (1882), *s.* 336—*Judgment-debtor's application to be declared an insolvent—Release of the surety.*] A person standing surety for a judgment-debtor under s. 336 of the Civil Procedure Code (Act XIV of 1882) is released from his obligation when the judgment-debtor has applied to be declared an insolvent. *Koylash Chunder Shaha* v. *Christophoridi*, I. L. R. 15 Calc. 171; and *Ramzan* v. *Gerard*, I. L. R. 13 All. 100, followed. DWARKADAS PARSHOTAMDAS *v.* ISABHAI DAUDKHAN.

[19 Bom. 210

3.—*Surety for minor—Contract Act (IX of 1872), s.* 128.] A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary, is liable to be sued on it whether the contract of the minor is considered to be void or voidable. KASHIBA *v.* SHRIPAT NARSHIV.

[19 Bom. 697

(2) ENFORCEMENT OF SECURITY.

4.—*Surety for amount of decree pending appeal—Execution of decree—Separate suit—Civil Procedure Code* (1882), *ss.* 244, 253 *and* 545.] Where

SURETY—*continued.*

(2) ENFORCEMENT OF SECURITY—*continued.*

a surety has become security for the appellant in an Appellate Court, under s. 545 of the Code of Civil Procedure, the security-bond cannot be enforced in execution of the decree under s. 253, but a separate suit must be brought against the surety. *Kali Kharan Singh* v. *Balgobind Singh*, I. L. R. 15 Calc. 497, referred to. TOKHAN SINGH *alias* ROOP NARAIN SINGH *v.* UDWANT SINGH.

[22 Calc. 25

5.—*Civil Procedure Code* (1882), *ss.* 253, 545, 582 *and* 583 — *Execution of decree — Security for performance of decree of Appellate Court—Method of enforcing such security.*] Where in an appeal security has been given to the Appellate Court for the due performance of such decree as it may pass, the decree-holder may enforce such security in the manner provided for by s. 253 of the Code of Civil Procedure. *Bans Bahadur Singh* v. *Mughla Begam*, I. L. R. 2 All. 604, followed. *Thirumalai* v. *Ramayyar*, I. L. R. 13 Mad. 1; and *Venkapa Naik* v. *Baslingapa*, I. L. R. 12 Bom. 411, approved; *Kali Charan Singh* v. *Balgobind Singh*, I. L. R. 15 Calc. 497; and *Tokhan Singh* v. *Udwant Singh*, I. L. R. 22 Calc. 25, dissented from. JANKI KUAR *v.* SARUP RANI.

[17 All. 99

6.—*Execution of decree against surety—Security for due performance of appellate decree, Enforcement of — Civil Procedure Code* (1882, *as amended by Act VII of* 1888), *s.* 546.] A security-bond given by a third party for the due performance of the decree of the Appellate Court under s. 546 of the Civil Procedure Code cannot be enforced in execution of that decree. *Radha Pershad Singh* v. *Phuljuri Koer*, I. L. R. 12 Calc. 402; *Kali Charan Singh* v. *Balgobind Singh*, I. L. R. 15 Calc 497; and *Tokhan Singh* v. *Udwant Singh*, I. L. R. 22 Calc. 25, followed in principle. *Venkapa Naik* v. *Baslingapa*, I. L. R. 12 Bom. 411, dissented from. *Thirumalai* v. *Ramayyar*, I. L. R. 13 Mad. 1; and *Arunachellam* v. *Arunachellam*, I. L. R. 15 Mad. 203, referred to. SURJOO DAS *v.* BALMAKUND DAS.

[23 Calc. 212

7.—*Surety after passing of decree—Mode of realisation of security—Civil Procedure Code, s.* 253 *— Jurisdiction of Revenue Court.*] Where, after the passing of a decree for arrears of rent, a friend of the judgment-debtor entered into a security bond whereby he rendered himself personally liable and hypothecated a share in certain zemindari property to secure the performance of the decree, it was held that the obligation created by such security-bond could not be enforced by a Court of Revenue by the sale of the hypothecated property. BEHARI LAL *v.* JAGNANDAN SINGH.

[19 All. 247

8.—*Surety under Civil Procedure Code* (1882), *s.* 349 — *Surety for insolvent judgment-debtor—Default of principal—Liability of surety—Mode of enforcing liability of surety.*] The Civil Procedure Code (Act XIV of 1882) provides no means for enforcing in execution a surety-bond passed under s. 349. The proper course of the plaintiff is to obtain an assignment of the bond with a view to suing on it. MINGALE ANTONE KANE *v.* RAMCHANDRA BAJE.

[19 Bom. 694

SURRENDER.

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.

[18 Bom. 250

SURVEY OFFICER.

See SPECIAL OR SECOND APPEAL — ORDERS SUBJECT OR NOT TO APPEAL.

[21 Calc. 935

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[21 Calc. 935

——, Decision of.

See KHOTI SETTLEMENT ACT, S. 17.

[21 Bom. 480, 608

See KHOTI SETTLEMENT ACT, S. 20.

[21 Bom. 695

——, Entry in record of.

See KHOTI SETTLEMENT ACT, S. 17.

[18 Bom. 133
[20 Bom. 475
[21 Bom. 235, 244, 467

SURVIVORSHIP.

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT.

[17 Mad. 144

See CERTIFICATE OF ADMINISTRATION— RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[19 Bom. 338
[17 All. 578
[23 Calc. 912

See COURT-FEES ACT, S. 19D.

[23 Calc. 980

See HINDU LAW—INHERITANCE — IMPARTIBLE PROPERTY.

[19 Mad. 451
[L. R. 23 I. A. 128

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

[19 Mad. 72
[20 Mad. 207

SURVIVORSHIP—*concluded.*

See HINDU LAW — INHERITANCE — SPECIAL HEIRS — MALES — AFFILIATED SON.
[17 Mad. 48

See HINDU LAW — INHERITANCE—SPECIAL LAWS—NIHANGS.
[16 All. 191
[L. R. 21 I. A. 17

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATIONS BY MEMBERS—OTHER MEMBERS.
[21 Bom. 797

See HINDU LAW—PARTITION — REQUISITES FOR PARTITION.
[19 Mad. 345

See REPRESENTATIVE OF DECEASED PERSON.
[19 Mad. 345

TACKING.

See MORTGAGE—REDEMPTION — RIGHT OF REDEMPTION.
[16 All. 295

See MORTGAGE—TACKING.
[18 Mad. 368

TALUQ.

——, Succession to.

See OUDE ESTATES ACT, S. 22.
[21 Calc. 997
[L. R. 21 I. A. 163

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL.
[21 Calc. 997
[L. R. 21 I. A. 163

TALUQDARI ESTATE, MORTGAGE OF.

See DECREE—FORM OF DECREE—MORTGAGE.
[20 Bom. 565

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.
[19 Bom. 80
[20 Bom. 565

TANK.

——, Repairs of, Liability for.

See CONTRACT, S. 70.
[18. Mad. 88

TARAI REGULATION (IV OF 1876).

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.
[17 All. 483

TARIFF ACT (VIII OF 1894), s. 10.

See CONTRACT—CONSTRUCTION OF CONTRACTS.
[21 Bom. 628

TAX.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.
[23 Calc. 835

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TAX.
[22 Calc. 680

——, Legality of.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 21.
[21 Bom. 630

——, Liability to.

See BENGAL MUNICIPAL ACT, 1884, SS. 113 AND 116.
[21 Calc. 319

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, S. 11.
[20 Bom. 732

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 87.
[22 Calc. 581

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 47.
[18 Mad. 310

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 53.
[17 Mad. 100
[18 Mad. 183

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 55.
[17 Mad. 453

——, Non-payment of.

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, S. 49.
[18 Bom. 400

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.
[18 Bom. 400

——, Suit to recover, illegally levied.

See MADRAS DISTRCT MUNICIPALITIES ACT, S. 262.
[19 Mad. 10

TAXATION OF COSTS.

See CASES UNDER COSTS—TAXATION OF COSTS.

See LIMITATION ACT, ART. 84.
[22 Calc. 943, 952 note

TAXING OFFICER, DECISION OF.

See COURT-FEES ACT, S. 5.
[20 Mad. 398

TENANCY.

——, Acknowledgment of.

See LANDLORD AND TENANCY—CONSTITUTION OF RELATION — ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT, &c.

[25 Calc. 1
[L. R. 24 I. A. 164

——, Conditions of.

See USER.

[16 All. 181

——, Evidence of origin of.

See LANDLORD AND TENANT—NATURE OF TENANCY.

[18 Bom. 221, 433
[22 Calc. 533
[L. R. 22 I. A. 60

——, Nature of.

See KHOTI SETTLEMENT ACT.

[20 Bom. 78

See CASES UNDER LANDLORD AND TENANT—NATURE OF TENANCY.

——, Relinquishment of.

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.

[18 All. 290

See LANDLORD AND TENANT — TRANSFER BY TENANT.

[18 All. 354
[24 Calc. 212

TENANCY-AT-WILL.

See LANDLORD AND TENANT — EJECTMENT—NOTICE TO QUIT.

[19 Bom. 150
[23 Calc. 200

TENANT.

See LANDLORD AND TENANT.

TENANTS.

——, Attornment of.

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

[17 Mad. 232

——, Right of.

See VENDOR AND PURCHASER—NOTICE.

[19 Bom. 391

TENDER.

See SMALL CAUSE COURT PRESIDENCY TOWNS — JURISDICTION—RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

TENDER—*concluded.*

See TRANSFER OF PROPERTY ACT, s. 83.

[17 Mad. 267

See TRANSFER OF PROPERTY ACT, s. 135.

[21 Calc. 792

TENURE.

——, Application to determine incidents of.

See BENGAL TENANCY ACT, s. 158.

[21 Calc. 662
[24 Calc. 197

——, Transfer of.

See KHOTI SETTLEMENT ACT.

[20 Bom. 78

See CASES UNDER LANDLORD AND TENANT—TRANSFER BY TENANT.

See CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

TERM OF YEARS.

See ENGLISH LAW.

[24 Calc. 216

TESTATOR, CREDITOR OF.

See PROBATE — OPPOSITION TO, AND REVOCATION OF, GRANT.

[17 Mad. 373

THEFT.

See CATTLE TRESPASS ACT, s. 22.

[22 Calc. 139

——, Damages for.

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &c.

[24 Calc. 672

1.—*Penal Code (Act XLV of 1860), s. 378, Ill. (o)—Removal by a wife of her husband's property left in her custody.*] There is no presumption of law that a wife and husband constitute one person in India for the purposes of criminal law. If the wife, removing her husband's property from his house, does so with dishonest intention, she is guilty of theft. QUEEN-EMPRESS *v.* BUTCHI.

[17 Mad. 401

2.—*Penal Code (Act XLV of 1860), ss. 378, 379. 23 and 24—Removal of debtor's property by the creditor—Penal Code as drafted in 1837, s. 363.*] With a view to coerce the complainant to pay a sum of Rs. 14, which he owed to the accused, three head of cattle worth Rs. 60 were removed from the complainant's homestead under the order of the accused:—*Held*, the offence of theft was not committed by the accused. The illustrations to s. 378 of the Penal Code indicate that it was the intention of the Legislature that, in order to have committed theft within the

THEFT—*concluded.*

meaning of the section, the taker must have taken the thing with the intention of keeping it himself, or disposing of it for his own benefit or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. The words "intending to take dishonestly any moveable property" in the above section, read with s. 23 and s. 24 of the Penal Code, mean "with the intention of gaining by unlawful means property to which he is not legally entitled." "To gain property by unlawful means," means "to gain the thing moved for the use of the gainer," and not "the gaining possession of it for a time for a temporary purpose." Section 363 of the Penal Code, as drafted in 1837, discussed. PROSONNO KUMAR PATRA *v.* UDOY SANT.

[22 Calc. 669

3.—*Penal Code (Act XLV of 1860), ss. 378, 23 and 24—Removal of debtor's property by creditor to enforce payment of debt—Wrongful gain—Wrongful loss.*] A creditor by taking any moveable property of his debtor from the debtor's possession or without his consent, with the intention of coercing him to pay his debt commits the offence of theft as defined in s. 378 of the Penal Code. Sections 23 and 24 of the Penal Code discussed and explained. *Prosonno Kumar Patra* v. *Udoy Sant* I. L. R. 23 Calc. 669, overruled. QUEEN-EMPRESS *v.* SRI CHURN CHUNGO.

[22 Calc. 1017

4.—*Penal Code (Act XLV of 1860), s. 379—Removal by creditor of his debtor's property with a view to obtaining payment of his debt.*] *Held*, that the removal by a creditor against the will of his debtor of property belonging to such debtor, with the view of compelling such debtor to discharge his debt, amounts to theft within the meaning of s. 379 of the Penal Code. *Queen-Empress* v. *Surmeshar Bai*, Weekly Notes, All. (1888) 97, referred to. *Prosonno Kumar* v. *Udoy Sant*, I. L. R. 22 Calc. 669, dissented from. QUEEN-EMPRESS *v.* AGHA MUHAMMAD YUSUF.

[18 All. 88

TITLE. *Col.*

1. Evidence and Proof of Title ... 1259

See CLAIM TO ATTACHED PROPERTY.

[18 Bom. 241, 260

See HINDU LAW—GIFT—REQUISITES OF GIFT.

[16 All. 185

See POSSESSION—ADVERSE POSSESSION.

[21 Bom. 509

——, Acknowledgment of.

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

[18 All. 458

TITLE—*continued.*

——, Breach of covenant for.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.

[21 Bom. 175

See VENDOR AND PURCHASER—BREACH OF COVENANT.

[21 Bom. 175

——, Defect in.

See TRANSFER OF PROPERTY ACT, S 55.

[20 Bom. 522

See VENDOR AND PURCHASER—PURCHASERS, RIGHTS OF.

[20 Bom. 522

——, Denial of.

See ESTOPPEL—DENIAL OF TITLE.

[19 Bom. 133, 133 note
[18 All. 329

See JURISDICTION OF REVENUE COURT.

[17 Mad. 140

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[18 Bom. 110
[17 All. 45
[20 Bom. 759

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[17 Mad. 218
[20 Bom. 354
[24 Calc. 440

——, Determination of.

See ESTOPPEL—DENIAL OF TITLE.

[18 All. 329

——, Effect on, of non-compliance with darkhast rules.

See JURISDICTION OF CIVIL COURT—POTTAHS.

[18 Mad. 434

——, Evidence of.

See LANDLORD AND TENANT—NATURE OF TENANCY.

[22 Calc. 533

See POSSESSION—EVIDENCE OF TITLE.

[21 Calc. 244
[20 Bom. 270, 798

——, Proof of.

See ISSUES—FRAMING AND SETTLEMENT OF ISSUES.

[20 Bom. 753

See ONUS OF PROOF—EJECTMENT.

[19 Bom. 803

TITLE—*concluded.*

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.

[19 Mad. 165

——, **Question of.**

See APPEAL—N.-W. P. ACTS—N.-W. P. LAND REVENUE ACT.

[18 All. 210

See CERTIFICATE OF ADMINISTRATION—PROCEDURE.

[17 Mad. 477
[23 Calc. 431

See JURISDICTION OF REVENUE COURT.

[17 Mad. 140

See LETTERS OF ADMINISTRATION.

[21 Calc. 344

See MUNSIF, JURISDICTION OF.

[23 Calc. 425

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[17 Mad. 106
[18 All. 270

See RES JUDICATA—MATTERS IN ISSUE.

[24 Calc. 569

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CROPS.

[21 Calc. 430

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[21 Bom. 248

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—PROFITS OF LAND.

[21 Bom. 248

——, **Suit for declaration of.**

See VALUATION OF SUIT—APPEALS.

[18 Bom. 100

——, **Warranty of.**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[17 Mad. 228

(1) EVIDENCE AND PROOF OF TITLE.

—Dispute as to ownership of property—Trespasser—Onus of proof.] A person sued as a trespasser cannot without proof of his own right oust an apparent owner by pointing out same defect in the title of the latter. TULJARAM *v.* BAMANJI KHARSEDJI.

[19 Bom. 828

TITLE-DEEDS.

——, **Deposit of.**

See CASES UNDER DEPOSIT OF TITLE-DEEDS.

TITLE-DEEDS—*concluded.*

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[19 All. 76
[L. R. 23 I. A. 106

See NEGOTIABLE INSTRUMENTS ACT, s. 13.

[17 Mad. 85

——, **Possession of.**

See REGISTRATION ACT, s. 50.

[18 Bom. 444

TOLLS.

——, **Lease of.**

See BOMBAY TOLLS ACT, s. 7.

[20 Bom. 668

——, **Non-liability to.**

See MADRAS LOCAL BOARDS ACT, s. 87.

[20 Mad. 16

TORT.

See ENCROACHMENT.

[17 Mad. 363

——, **Action framed in.**

See MINOR—LIABILITY ON CONTRACTS.

[24 Calc. 265

TRADE-MARK.

—Right of exclusive user — Infringement — Combination of numerals as a trade mark—Injunction.] The question of the right to the exclusive user of a trade-mark or trade number is largely, if not entirely, a question of fact, and the question whether it exists in any given case must depend upon whether the evidence in that case is sufficient to show such an association or connection between the mark or the number and the firm which uses it as to indicate to the ordinary purchasers in the market, that the goods are the goods of that particular firm. To show that a particular trade number has acquired a reputation in the market, and that purchasers buy the goods by that number and not from an examination of the nature or quality of the cloth, is not sufficient to establish the right of exclusive user of that number. There must be such an association between the number and the firm's name as to indicate in the understanding of the public that the goods bearing that number came from that particular firm. The right of exclusive user of a name or a number as a trade-mark is not an absolute and unqualified right which would entitle the owner to prevent another person from using it under all circumstances. It is only when the use of that name or number deceives or is reasonably likely to deceive the public that it can be interfered with or prevented. There must be a reasonable probability of purchasers being deceived, it is not enough to show a mere possibility of deception. BARLOW *v.* GOBINDRAM.

[24 Calc. 364

TRADER.

See INSOLVENT ACT, s. 60.

[21 Calc. 1018

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 53.

[17 Mad. 100

TRAFFIC SUPERINTENDENT OF RAILWAY.

See RAILWAYS ACT, 1890, s. 77.

[24 Calc. 306

TRANSFER OF CIVIL CASE.

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 4.

[19 Bom. 46

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &c.

[18 Bom. 61

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

[22 Calc. 871

See SUBORDINATE JUDGE, JURISDICTION OF.

[16 All. 363

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[18 Bom. 61

—Letters Patent, High Court, 1865, *cl.* 13—*Grounds for transfer—Practice,*] In a suit for immoveable property instituted in the Dinagepur Court, the defendant applied for its transfer to the High Court under cl. 13 of the Letters Patent, the grounds upon which the transfer was asked for being that questions of difficulty arose in the suit; that the defendants witnesses lived in Calcutta; that it would be impossible for her to go to Dinagepur and take her witnesses there owing to the expense; that an agreement upon which the suit was brought was executed in Calcutta; that the plaintiff resided and carried on business in Calcutta; and that all the persons who knew of the transactions in suit were residents of Calcutta or its neighbourhood:—*Held*, under the circumstances, that the case was a proper one to be transferred to the High Court. HARENDRA LALL ROY *v.* SARVAMANGALA DABEE.

[24 Calc. 183

TRANSFER OF CRIMINAL CASE.

See CRIMINAL PROCEEDINGS.

[19 Mad. 375

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[23 Calc. 44

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[23 Calc. 300, 442

TRANSFER OF CRIMINAL CASE—*continued.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

[22 Calc. 389

See SECURITY FOR GOOD BEHAVIOUR.

[16 All. 9
[19 All. 291

1.—*Ground for transfer—Criminal Procedure Code* (1882), *s.* 526—*Reasonable apprehension in the mind of the accused—Real bias—Incidents calculated to create apprehension of bias.*] In dealing with applications for transfer what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the accused, but also the further question, whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. DUPEYRON *v.* DRIVER.

[23 Calc. 495

FARZAND ALI *v.* HANUMAN PRASAD.

[19 All. 64

2.—*Ground for transfer—Probability of unfair trial—Complexity of case—Transfer from one Magistrate to another—Local investigation—Magistrate trying case, Competency of, to be witness—Competent witness—Examination of Magistrate trying case as a witness.*] Where an Assistant Magistrate with second class powers was directed by the District Magistrate to take up a case of some complexity, arising out of disputed boundaries to land, in which the accused were charged with rioting, trespass, mischief and theft, and where, in the course of such investigation, he held a local inquiry extending over five days, during which he made a number of notes and appeared to have made a very careful and conscientious investigation of the locality, such as would properly be made by a person whose duty it was to get at the facts with a view to lay the same before some tribunal, and during such investigation it appeared that he acquired a large amount of information with reference to the occurrence on which he had to arrive at a judicial determination, but which, by reason of the way it was acquired, he could not properly or legally consider in arriving at an ultimate decision of the case (such information not being guarded by the safeguards by which statements on which a Judge or a Magistrate exercising judicial functions can act must be guarded), and where it was suggested that the notes so made should be put on the record, and the Assistant Magistrate tender himself while trying the case as a witness to be cross-examined by either the prosecution or the defence:—*Held*, that such a course could not be allowed, and that the Assistant Magistrate ought

TRANSFER OF CRIMINAL CASE—*concluded.*

not to try the case, but that it must be transferred to some other Magistrate exercising first class powers for disposal. HARI KISHORE MITRA *v.* ABDUL BAKI MIAH.

[21 Calc. 920

3.—*Ground for transfer—View of the scene of the occurrence by a Magistrate trying a criminal case—Local investigation—Criminal Procedure Code, s.* 526.] It is not only not objectionable, but in many cases highly advisable, that a Magistrate trying a criminal case should himself inspect the scene of the occurrence in order to understand fully the bearing of the evidence given in Court But if he does so, he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other. The fact that he has held such a local investigation does not amount to a ground for transferring the case to another Magistrate. IN THE MATTER OF THE PETITION OF LALJI.

[19 All. 302

4.—*Criminal Procedure Code* (1882), *ss* 526 *and* 192—*Transfer of Criminal case by the High Court to the Court of a District Magistrate—Interpretation of order—Practice.*] When a criminal case is transferred by an order of the High Court from a Court subordinate to a District Magistrate to the Court of a District Magistrate, if it is intended that the District Magistrate shall have power to transfer the case to a Subordinate Court, that intention will be expressed in the order of the High Court. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply s. 192 of the Code of Criminal Procedure, and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it. QUEEN-EMPRESS *v.* MATA PRASAD.

[19 All. 249

TRANSFER OF PROPERTY ACT (IV OF 1882).

——, s. 2.

See s. 99.

[19 Mad. 382

——, s. 3.

See PARTIES — PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[21 Calc. 116

See REGISTRATION ACT, s. 50.

[16 All. 478

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——, s. 4.

See REGISTRATION ACT, s. 17.

[17 Mad. 275

——, s. 6.

See HINDU LAW — REVERSIONERS — POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST.

[17 All. 125

See ONUS OF PROOF — HINDU LAW—ALIENATION.

[17 All. 125

——, s. 8.

See REGISTRATION ACT, s. 18.

[18 Mad. 454

——, s. 14.

See PERPETUITIES, RULE AGAINST.

[20 Bom. 511

——, s. 41.—*Ostensible ownership—Purchase bonâ fide for value from ostensible owner—Laches—Decision based upon ground not specifically pleaded.*] Where a Court sees that the rights of one of two innocent parties must be sacrificed, it is entitled to consider whether anything in the conduct of the party who comes into Court and seeks relief has debarred him from asserting his right. Where the plaintiff had for many years left another person in possession of a house, and the defendant had become at auction-sale the *bonâ fide* purchaser for value of the house under a decree against such person as ostensible owner, the Court found that s. 41 of the Transfer of Property Act applied and dismissed the plaintiff's suit. The Court is not precluded from basing its decision upon a ground not specifically pleaded by either of the parties. THAKURI *v.* KUNDAN.

[17 All. 280

——, s. 43.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[18 Mad. 492

——, s. 52.

See FOREIGN COURT, JUDGMENT OF.

[19 Mad. 257

See LIS PENDENS.

[19 Mad. 271

1.—s. 53.—*Statutes* 13 *Eliz. cap.* 5, *and* 27 *Eliz. cap.* 4—*Voluntary transfers as against creditors or subsequent transferees for consideration—Notice—Registration—Duty of mortgagee in searching for prior incumbrances—Post-nuptial settlement with power of appointment to wife—Deed of appointment in favour of children—Secrecy as evidence of fraud—Subsequent mortgage by wife and trustee of settlement without mention of deed*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

of appointment.] In 1870 the defendant *J* and her husband executed a post-nuptial settlement by which they assigned certain Municipal debentures to the defendant *E* (the brother of *J*) and one *G* "upon trust for *J* during her life and after her death as she should by deed or will appoint," and subsequently the trustees in pursuance of a power given them by the settlement sold the debentures and invested the proceeds in house property in Calcutta, such house and premises thereafter representing the trust property and being held by the trustees on the trusts of the settlement. On the 17th December, 1878, *E* retired from the trust, and made over his interest to the remaining trustee *G*, and on the same day *J* executed a deed of appointment in favour of her children representing to her solicitor that she did so to protect the property from her husband. The deed of appointment was witnessed by *E* and was duly registered, but it was not mentioned in the deed which assigned the trust property to *G*, and no information of it was given to him, the deed remaining in *J's* custody and not being made over to *G*. In 1884, *G* retired from the trust, and *E* became sole trustee in his place. In March, 1884, money was raised by *J* and *E* on mortgage of the trust property to *G*, but no mention of the deed of appointment was made in the mortgage-deed. *J's* husband died in October, 1884, but neither then, nor on the occasion of another mortgage of the property in 1888, was any mention made of the deed of appointment, and there was nothing on the record of the case to show that the husband was ever in needy circumstances, or pressed his wife for money, or that he died leaving no property. In 1890, *E* and *J* mortgaged the house and premises to the plaintiffs, the mortgage-deed (which was duly registered) reciting the settlement of 1870, and that "*J* has not made any irrevocable appointment of the said trust premises under the power of appointment given to her in the settlement," but making no mention of the deed of appointment executed by her in 1878. A deed of further charge was also executed by *J* and *E* in 1891 in favour of the plaintiffs also without any mention of the deed of appointment: this was also duly registered. Before execution of the mortgage of 1890, the plaintiffs' solicitors did not search the register of deeds further back than 1884, because they were dealing with persons who must have known of the exercise of the power of appointment, and who had given a covenant that no such exercise had been made, and because they then found that *G*, the former trustee, had taken a similar security himself in 1884, and must have been satisfied that no such blot existed on the title. They had moreover a letter from *G's* solicitors saying that they had searched the register up to 1884. *J* first set up the deed of appointment as a defence in the present suit, which was brought on the mortgages against *E* and *J* and their children, and in which the plaintiffs sought to recover the amount advanced with interest, and prayed that the deed might be declared void as against them. In this suit *E* did not appear. The principal grounds of

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

defence were that the mortgage-deeds were not explained to *J*, that she was ill at the time, and left all the transactions to her brother *E*, and that she did not know the contents of the deeds which she contended were therefore not binding on her; that the deed of appointment was made in consideration of her natural love and affection for her children; and that the plaintiffs had notice of it. On the facts the lower Court (SALE, J.), found that she had full and complete knowledge of the contents of the mortgage-deeds and was bound by them, and that there was gross fraud towards the plaintiffs on the part of *E* in suppressing the fact of the existence of the deed of appointment:—*Held* by SALE, J., that, according to the law which existed in India prior to the passing of the Transfer of Property Act, the deed of appointment was a voluntary conveyance and fraudulent within the meaning of the Statute 27 Eliz. cap. 4, and void as against the plaintiffs as subsequent transferees for valuable consideration; the legal presumption of fraud which the Court was entitled to make on the cases decided on that statute rendering the question of notice or no notice immaterial. *Judah* v. *Abdool Kureem*, 22 W. R. 60; *Doe d. Otley* v. *Manning*, 9 East, 59; *Doe d. Newman* v. *Rushan*, 17 Q. B. 724; and *Godfrey* v. *Poole*, L. R. 13 Ap. Cas. 497, referred to. Section 53 of the Transfer of Property Act has not altered the law in that respect. The deed of appointment came within the definition of "transfer of property," given in that Act, there being nothing in the Act to suggest that it was intended to confine its operation to transfers by contract. The words of s. 53 "may be presumed to have been made with such intent as aforesaid" (*i.e.*, with a fraudulent intent), should be construed in accordance with the cases decided under the Statute 27 Eliz. cap. 4. Even assuming that it was intended by s. 53 to exclude voluntary conveyances of which a subsequent transferee had notice from the presumption of fraud:—*Held*, on the facts, that the plaintiffs had no notice of the deed of appointment. The doctrine of notice if applied, must be applied in accordance with, and subject to, the definition of notice given in the Act itself. There was no actual notice, and there was not such an "abstention from inquiry or search" on the part of the plaintiffs as to fix them with constructive notice. The words "wilful abstention from inquiry and search" mean such abstention as would show want of *bona fides* on the part of the plaintiffs in respect of this particular transaction. *Agra Bank* v. *Barry*, L. R. 7 E. & I. 135, referred to:—*Held*, that the doctrine of registration amounting to notice, as laid down in the case of *Lakshmandas Saruphand* v. *Dasrat*, I. L. R. 6 Bom. 168, had no application to the present case. Having regard to the terms of s. 53 of the Transfer of Property Act, that doctrine, if applicable, can only apply for the purpose, either of rebutting the presumption of fraud or of preventing the presumption of fraud from arising. If the true meaning of that section be that the Court is to presume fraud only in accordance with the facts of each particular case, the facts of the present case were

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

amply sufficient to raise the presumption as regards the deed of appointment. That deed therefore was fraudulent, as against the plaintiffs, and they were entitled to a declaration that it was void and inoperative as against them:—*Held*, on appeal (by PETHERAM, C.J., and NORRIS and O'KINEALY, JJ.) that, looking to the unusual way in which the transaction as to the deed of appointment was carried out, and the secrecy given to it, the result of which was to enable *E* and *J* to raise money on the trust property by inducing persons to believe that the whole title lay in themselves alone, and on the other facts in the case, apart from the presumption which might be made under s. 53 of the Transfer of Property Act, where a transfer is made gratuitously for a grossly inadequate consideration, *viz.*, that it may be presumed to have been made to defraud or defeat creditors, the decree of the Court below was correct. JOSHUA *v.* ALLIANCE BANK OF SIMLA.

[22 Calc. 185

2.—s. 53.—*Rights of a transferee in good faith and for consideration—Good faith. Meaning of—Effect of transfer made with the object to delay or defeat a creditor, the transferee not being aware of such an intention.*] Where a transferee for value is not aware of any intention on the part of the transferor to defeat or delay his creditors, but has knowledge only of an impending execution against the transferor, such knowledge of itself is not sufficient to vitiate the transfer, and does not make the transferee a transferee otherwise than in good faith within the meaning of s. 53 of the Transfer of Property Act (IV of 1882). *Ramburun Singh* v. *Jankee Suhai*, 22 W. R. 473, referred to. ISHAN CHUNDRA DAS SARKAR *v.* BISHU SIRDAR.

[24 Calc. 825

3.—s. 53.—*Transfer in fraud of creditors—Good faith.*] When it is said that a deed is not executed in good faith what is meant is that it was executed as a mere cloak, the real intention of the parties being that the ostensible grantor should retain the benefit to himself. RAMASAMIA PILLAI *v.* ADINARAYANA PILLAI.

[20 Mad. 465

——, s. 54.

See MAHOMEDAN LAW — PRE-EMPTION —RIGHT OF PRE-EMPTION—GENERALLY.

[16 All. 344

See REGISTRATION ACT, S. 18.

[18 Mad. 454

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[17 Mad. 146
[22 Calc. 179

See VENDOR AND PURCHASER—INVALID SALES.

[18 Mad. 61

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——, s. 55.—*Meaning of words "material defects"—Defect in title.*] The expression "material defect in the property" in s. 55 of the Transfer of Property Act (IV of 1882), includes a defect in the title to an estate. ESSA SULLEMAN *v.* DAYABHAI PARMANANDAS.

[20 Bom. 522

——, s. 58.

See DECREE—CONSTRUCTION OF DECREE —MORTGAGE.

[19 Mad. 249
[L. R. 23 I. A. 32

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[22 Calc. 33

——, s. 59.

See DEPOSIT OF TITLE-DEEDS.

[17 All. 252
[24 Calc. 348

See EVIDENCE ACT, S. 68.

[18 Mad. 29

——, s. 60.

See ATTACHMENT — MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[21 Bom. 226

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS.

[21 Bom. 226

See MORTGAGE — REDEMPTION — REDEMPTION OF PORTION OF PROPERTY.

[17 All. 63

——, ss. 61 and 62.

See MORTGAGE— REDEMPTION — RIGHT OF REDEMPTION.

[16 All. 295

——, s. 63.

See MORTGAGE—ACCOUNTS.

[17 All. 232

——, s. 67.

See s. 99.

[21 Calc. 34
[16 All. 415
[22 Calc. 813

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.

[24 Calc. 473

See LIMITATION ACT, ART. 122.

[24 Calc. 473

See MORTGAGE—POWER OF SALE.

[21 Bom. 267

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

1.—s. 67 and s. 68 (a).—*Mortgagee's right to sue for mortgage money and for sale—Usufructuary mortgage — Covenant to repay mortgage money—Right of suit.*] The first defendant executed a usufructuary mortgage of certain land in favour of plaintiff's deceased husband. It contained a covenant to pay the mortgage money in Chittrai Kalavadi of the year 1883. This covenant was followed by these words: "If I fail to pay the mortgage amount in the said Kalavadi then you shall receive the said mortgage amount in the Chittrai Kalavadi of whatever year I may pay it, deliver the said lands to my possession having cleared off the arrears of Government revenue, and also give back the bond." The plaintiff sued to recover the money secured from the defendant personally and also by sale of the mortgaged property:—*Held*, by a Full Bench, that the bond contained a covenant to pay, and that therefore the suit was maintainable. SIVAKAMI AMMAL *v.* GOPALA SAVUNDRAM AYYAN.

[17 Mad. 131

2.—s. 67.—*Decree for payment of money by instalments on specified dates—Charge—Consent decree—Separate suit.*] Where by a consent decree it is ordered that payment of the decretal amount be made by instalments, and that the properties set forth in a schedule annexed to the decree stand charged with payment of the said instalments, the said properties cannot be sold in execution of the decree, but a separate suit must be brought under s. 67 of the Transfer of Property Act. AUBHOYESSURY DABEE *v.* GOURI SUNKUR PANDAY.

[22 Calc. 859

3.—s. 67 and s. 99.—*Charge for maintenance created by a decree, how enforced—Civil Procedure Code* (1882), *s.* 244 (*c*)—*Separate suit.*] Where a decree, after declaring the amount payable to the plaintiff in respect of future maintenance, and that it should be a charge on certain immoveable property which formed a specific item in the general estate of a testator, went on to direct that for the purpose of securing the payment of the future maintenance, a deed should be executed in favour of the plaintiff, charging such immoveable property, on her executing a release of all her rights and interest in the general estate:—*Held*, that such a charge was properly enforced by a suit brought on the deed, and that it could not be given effect to by proceedings in execution. *Aubhoyessury Dabee* v. *Gouri Sunkur Panday*, I. L. R. 22 Calc. 859, followed; *Ashutosh Banerjee* v. *Lukhimoni Debya*, I. L. R. 19 Calc. 139, distinguished. MATANGINI DASSEE *v.* CHOONEYMONEY DASSEE.

[22 Calc. 903

4.—s. 67.—*Usufructuary mortgage — Sudbharna bond—Covenant to repay—Construction of bond—Suit for money and for sale—Form of decree.*] In a *sudbharna* mortgage bond it was stipulated, "having paid the principal money in the month of *Chait*, 1297, we shall take back the document and the land. In case we fail to repay the principal money on due date the *sudbharna* bond shall remain in force:"—*Held*, that there was in this contract no agreement to repay the principal money, and no such agreement was implied by the provisions as to taking back the document and the land, and therefore there was no right to a money-decree:—*Held*, that under s. 67 of the Transfer of Property Act (IV of 1882) an usufructuary mortgage cannot as such (*i.e.*, unless there is anything in the contract which would imply the right) sue either for foreclosure or for sale. *Umda* v. *Umrao Begam*, I. L. R. 11 All. 367; *Chathu* v. *Kunjan*, I. L. R. 12 Mad. 109; and *Ramayya* v. *Gurura*, I. L. R. 14 Mad. 232, referred to; *Venkatasami* v. *Subramanya*, I. L. R. 11 Mad. 88, not followed. LUCHMESHAR SING *v.* DOOKH MOCHAN JHA.

[24 Calc. 677

——, s. 68.

See s. 67.

[17 Mad. 131

1.—s. 68 (c).—*Right of suit — Usufructuary mortgage — Mortgagee kept out of possession by mortgagor's indirect conduct.*] Where a usufructuary mortgagee is unable to obtain possession of the mortgaged property owing to his mortgagor having executed a subsequent mortgage and placed the second mortgagee in possession, the first mortgagee may elect to sue at once for the money under s. 68 of the Transfer of Property Act, instead of for possession of the land. LINGA REDDI *v.* SAMA RAU.

[17 Mad. 469

2.—s. 68.—*Usufructuary mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Mortgagor holding on after expiry of lease—Right of suit.*] *H L* and others, mortgagees, under a usufructuary mortgage executed in their favour by one *G* (the usufruct being applicable in satisfaction of the interest of the debt) leased the mortgaged premises to the mortgagor. The lease was for a term certain with a covenant that the mortgagor might renew on compliance with certain conditions. The mortgagor on the expiry of the lease did not fulfil the conditions of the said covenant, but refused to give up possession of the mortgaged property to the mortgagees:—*Held*, that the mortgagees were entitled, either under cl. (*b*) (as held by EDGE, C.J., and TYRRELL, J.), or under, cl. (*c*)—(as held by KNOX, BANERJI and BURKITT, JJ.) of s. 68 of Act IV of 1882, to a money-decree for the amount due under the mortgage. *Shitab Dei* v. *Ajudhia Prasad*, Weekly Notes, All. (1887) 269; and *Jhabbu Ram* v. *Girdhari Singh*, I. L. R 6 All. 298, distinguished. HIRA LAL *v.* GHASITU.

[16 All. 318

3.—s. 68 (c).—*Usufructuary mortgage — Dispossession of mortgagee by a trespasser—Suit for recovery of the mortgage money.*] The words "any other person" in the concluding portion of cl. (*c*) of s. 68 of the Transfer of Property

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

Act, mean "any other person having a title." The disturbance of the mortgagee's possession by a trespasser will not confer upon the mortgagor for the mortgage money. *Gopalasami* v. *Arunachella*, I. L. R. 15 Mad. 304, followed. NAKCHEDI RAM *v.* RAM CHARITAR RAI.

[19 All. 191

——, s. 72.

See MORTGAGE—ACCOUNTS.

[19 Mad. 327

——, s. 73.

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.

[24 Calc. 746

——, s. 74.

See DECREE—FORM OF DECREE—MORTGAGE.

[18 All. 189

See MORTGAGE—SALE OF MORTGAGED PROPERTY — RIGHTS OF MORTGAGEES.

[19 All. 527

——, s. 74.—*Redemption of prior mortgage—Extinguishment of prior mortgage—Title by possession*] The trustees of a religious institution improperly mortgaged land forming part of its endowment, and put the mortgagee into possession on the 27th June, 1877, as usufructuary mortgagee. The mortgagee assigned his mortgage to defendant No. 1 on the 7th December, 1882. On the 23rd December, 1889, the mortgagors executed to the plaintiff a deed of usufructuary mortgage of the same land to secure Rs. 1,400: the deed stated that the money was borrowed with a view to discharge a prior mortgage and proceeded "as you have undertaken to pay Rs. 1,000 to the mortgagee, I credit you with Rs. 1,000 and receive Rs. 402 in cash." The plaintiff paid off the prior mortgage on the 18th April, 1890, but did not obtain possession, other persons having entered in the interests of the institution. The plaintiff now sued for possession and a declaration of his mortgage right, the persons in possession and the prior mortgagee, but not the mortgagors, being joined as defendants:—*Held*, that the Transfer of Property Act, s. 74, was not applicable to the case, and that the plaintiff was not entitled to a decree. KOOPMIA SAHIB *v.* CHIDAMBARAM CHETTI.

[19 Mad. 105

——, s. 75.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[20 Bom. 390

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[19 All. 527

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——, s. 76.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

[16 All. 386

——, s. 81.

See MORTGAGE—MARSHALLING.

[23 Calc. 790

——, s. 82.—*Mortgage debt, Apportionment of—Contribution. Suit for—Principles upon which contribution is to be assessed*] On the 4th of July, 1874, thirty-eight villages were mortgaged by *K* and *U* to *S* the father of the appellant. On the 28th of February, 1878, the mortgagee obtained a decree for sale on his mortgage. At the date of this mortgage, some of the villages comprised therein were liable under one or both of two decrees obtained on prior mortgages. Subsequently to the decree of the 28th of February, 1878, four of the villages affected by that decree were sold in execution of a simple money-decree and were acquired from the purchasers by one *A*. On the 20th of August, 1879, and the 20th of August, 1882, these same four villages were brought to sale in execution of the decree of the 28th of February, 1878, and were sold for Rs. 44,500. Thereupon the former purchaser *A* brought a suit against the representative of the mortgagee of 1874 and certain other persons for contribution, alleging that the said four villages had been sold for considerably more than the amount for which they were proportionately liable under the mortgage decree; that the defendants were owners of villages which were equally liable with his (the plaintiff's) villages under the decree of the 28th of February, 1878, but which had contributed nothing towards the satisfaction of that decree; that six of those villages and an eighth share in a seventh had been purchased by *S* (the predecessor in title of one of the defendants *H*), in execution of simple money-decrees, and that a share in an eighth village had been similarly purchased by the predecessor in title of the other defendants. Against these villages the plaintiff sought contribution:—*Held*, that in calculating the amount to which the plaintiff was entitled by way of contribution, the plaintiff was bound to take into account the liabilities which existed on most of the villages in respect of which the suit was brought under the two prior mortgages; that the plaintiff was entitled to obtain contribution from those villages only which had not been sold in execution of the decree of the 28th of February, 1878; that the unrealised balance of that decree must be regarded as the amount which the villages purchased by the decree-holder himself had contributed to the decree; and further, that, in determining the amount which the plaintiff was entitled to recover, regard must be had to the claims for contribution of the owners of such of the other mortgaged villages as had been sold in execution of the decree of the 28th of February, 1878, and had, like the plaintiff's villages, fetched more

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

than their quota of liability for the decree. HARI RAJ SINGH *v.* AHMAD-UD-DIN KHAN.

[19 All. 545

——, s. 83.—*Deposit in Court by mortgagor—Full and unconditional tender.*] The fact that a certain sum of money tendered under s. 83 of the Transfer of Property Act, and accepted by the mortgagee as the full amount due, is afterwards denied by him to be the full amount, and that the tender is accompanied by a claim to a registered receipt (to which the mortgagee agrees) and to the return of the title-deeds, does not render the tender conditional and therefore invalid. *Nanu* v. *Manchu*, I. L. R. 14 Mad. 49, distinguished. KORA NAYAR *v.* RAMAPPA.

[17 Mad. 267

—— s. 84.

See s. 135.

[24 Calc. 763

——, s. 85.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[18 All. 109

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[17 Mad. 17

See MORTGAGE—SALE OF MORTGAGED PROPERTY — RIGHTS OF MORTGAGEES.

[19 All. 527

See PARTIES—PARTIES TO SUIT—BENAMIDARS.

[24 Calc. 644

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[21 Calc. 116
[17 All. 537
[18 All. 109
[19 All. 543

See REGISTRATION ACT, S. 50.

[16 All. 478

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM

[20 Mad. 82
[19 All. 379

——, s. 86.

See DECREE—FORM OF DECREE—MORTGAGE.

[20 Mad. 35

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[20 Bom. 744
[19 All. 174
[24 Calc. 699, 766

See LIMITATION ACT, ART. 116.

[24 Calc. 699

TRANSFER OF PROPERTY ACT (IV OF 1882) —*continued.*

See MORTGAGE — REDEMPTION — MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

[16 All. 269

——, s. 87.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[24 Calc. 766

See MORTGAGE—REDEMPTION — RIGHT OF REDEMPTION.

[19 Mad. 40
[19 All. 180

——, s. 88.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[16 All. 259

See CIVIL PROCEDURE CODE, S. 257A.

[19 All. 186

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE.

[20 Mad. 78

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[21 Calc. 26
[16 All. 78, 270
[22 Calc. 931

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

See LIMITATION ACT, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE.

[19 All. 520

See MORTGAGE—SALE OF MORTGAGED PROPERTY — RIGHTS OF MORTGAGEES.

[18 All. 31

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[18 All. 31

——, s. 89.

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[24 Calc. 473

See CIVIL PROCEDURE CODE, S. 257A.

[19 All. 186

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[21 Calc. 818

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[16 All. 270
[22 Calc. 931

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[17 All. 581
[18 All. 316
[19 All. 174

See LIMITATION ACT, ART. 122.

[24 Calc. 473

See LIMITATION ACT, ART. 178.

[16 All. 23
[22 Calc. 924

See LIMITATION ACT, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE.

[19 All. 520

See MORTGAGE — REDEMPTION—RIGHT OF REDEMPTION.

[19 Mad. 40
[19 All. 180

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[19 All. 205

——, s. 90.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[21 Calc. 26
[16 All. 78

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[24 Calc. 766

See LIMITATION ACT, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.

[18 All. 371

——, s. 91.

See MORTGAGE—REDEMPTION — RIGHT OF REDEMPTION.

[19 Mad. 151

——, s. 92.

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

[16 All. 65
[19 Mad. 40
[19 All. 180, 202, 205

See RES JUDICATA—CAUSE OF ACTION.

[17 Mad. 96
[19 All. 202

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——, s. 93.

See MORTGAGE —REDEMPTION — RIGHT OF REDEMPTION.

[19 Mad. 40
[19 All. 180, 202

——, s. 93.—*Mortgage — Redemption — Decree for payment and redemption within six months—Application for execution of decree after six months had expired.*] Section 93 of the Transfer of Property Act (IV of 1882), under which a mortgagor, who has obtained a decree for redemption, may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force. CHENNAYA *v.* MALKAPA.

[20 Bom. 279

——, s. 94.

See CIVIL PROCEDURE CODE, S. 257A.

[19 All. 186

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[24 Calc. 766

——, s. 96.

See DECREE—FORM OF DECREE—MORTGAGE.

[23 Calc. 795

——, s. 97.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[24 Calc. 766

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[18 Bom. 684

——, s. 99.

See S. 67.

[22 Calc. 903

See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

[24 Calc. 473

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE.

[20 Mad. 78

See LIMITATION ACT, ART. 122.

[24 Calc. 473

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[18 All. 325

1.—s. 99 and s. 67.—*Sale of mortgaged property in execution of money-decree—Sale by mortgagee of mortgaged property to satisfy a claim not arising under the mortgage.*] A mortgagee cannot sell the mortgaged property in execution of an

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

ordinary money decree in satisfaction of a claim not arising under the mortgage. Section 99 of the Transfer of Property Act limits the right of a decree-holder in such a case, and provides that he shall not bring the mortgaged property to sale otherwise than by instituting a suit under s. 67 of that Act. *Quære:* Whether the suit to be instituted under s. 99 is a suit on the mortgage or is one on the charge created by attachment. JADUB LALL SHAW CHOWDHRY *v.* MADHUB LALL SHAW CHOWDHRY.

[21 Calc. 34

2.—s. 99 and s. 67.—*Usufructuary mortgage — Lease by mortgagee to mortgagor of mortgaged premises—Suit for recovery of rent—Attempt to sell mortgaged property in execution of money-decree for rent.*] *Held*, that a usufructuary mortgagee who had leased the mortgaged premises to his mortgagor could not, in execution of a simple money-decree for rent against the mortgagor, attach and sell the mortgaged premises, but must bring a suit as provided by s. 67 of Act IV of 1882. AZIM-ULLAH *v.* NAJM-UN-NISSA.

[16 All. 415

3.—s. 99 and s. 67.—*Application for the attachment and sale of mortgaged property in execution of a decree obtained not in accordance with the Transfer of Property Act, though suit instituted after the passing of the Act.*] A mortgagee obtained a decree on the 15th February, 1883, upon a mortgage bond, dated the 18th January, 1879. The decree simply provided that the plaintiff do obtain the amount of his claim, and that the mortgaged property should remain liable for the satisfaction of the debt. The judgment-creditor in execution of that decree sold one of the mortgaged properties, and afterwards assigned over the decree, and the assignee, on the 18th August, 1894, applied for the execution of the decree by attachment and sale of another of the mortgaged properties:—*Held*, on the objection of the judgment-debtors, that s. 99 of the Transfer of Property Act was applicable to the case, and that the mortgaged property could not be sold, unless a suit under s. 67 of the Act be brought, and the procedure prescribed by the Transfer of Property Act followed. The property, however, could be attached, as there is nothing in s. 99 prohibiting such attachment. CHUNDRA NATH DAY *v.* BURRODA SHOONDURY GHOSE.

[22 Calc. 813

4.—s. 99.—*Usufructuary mortgage — Suit by usufructuary mortgagee for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs.*] Certain usufructuary mortgagees not having been put in possession of the mortgaged property by the mortgagor, sued and obtained a decree for possession with mesne profits and costs. Under this decree the mortgagees were put in possession of the mortgaged property. They then applied for attachment and sale of the mortgaged property in execution of their decree for mesne profits and costs. This application was disallowed. The mortgagees then brought a suit for sale of the equity of redemption of the mortgaged property, reserving their rights and interests under the mortgage:—*Held*, that such a suit would not lie as being opposed to the intention of s. 99 of the Transfer of Property Act, 1882. *Azim-ullah* v. *Najm-un-nissa*, I. L. R. 16 All. 415; and *Jadub Lall Shaw Chowdhry* v. *Madhub Lall Shaw Chowdhry*, I. L. R. 21 Calc. 34, referred to. MAHABIR SINGH *v.* SAIRA BIBI.

[17 All. 520

5.—s. 99 and s. 2.—*Suit to set aside sale by mortgagee prior to coming into force of the Act — Construction of Statute.*] In a suit brought to set aside a sale effected by a mortgagee prior to the date when Act IV of 1882 (Transfer of Property Act) came into force:—*Held*, that the Transfer of Property Act (ss. 2 and 99) has no retrospective effect, so as to invalidate an order for sale which constituted a legal relation between the defendants passed before that Act came into force. NARANAPPA *v.* SAMACHARLU.

[19 Mad. 382

——, s. 101.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[20 Mad. 274

——, s. 105.

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[24 Calc. 440

——, s. 106.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[17 All. 45

[20 Bom. 759

——, s. 107.

See REGISTRATION ACT, S. 17.

[17 Mad. 275

See REGISTRATION ACT, S. 18.

[24 Calc. 20

——, s. 107.—*Hât, Lease of—General Clauses Act (I of 1868), s. 2, cl. 5 — Immoveable property—Registration Act (III of 1877), s. 17.*] A suit was brought for rent of a *hât* on the basis of a verbal settlement for three years at an annual *jama* of Rs 370. The defendants denied the settlement. The first Court found for the plaintiff; but, on appeal, an objection having been raised by the defendants that the verbal lease was illegal under the Transfer of Property Act, the suit was dismissed:—*Held*, a *hât* is a benefit arising out of land, and therefore within the definition of "immoveable property" as given in s. 2, cl. 5 of the General Clauses Act (I of

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

1868). The lease of a *hât* comes within s. 107 of the Transfer of Property Act (IV of 1882), and can be effected only by a registered instrument. SURENDRA NARAIN SINGH *v.* BHAI LAL THAKUR.

[22 Calc. 752

——, **s. 108.**

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[22 Calc. 820

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET.

[17 Mad. 98

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[24 Calc. 440

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[17 Mad. 296
[22 Calc. 494

——, **s. 111.**

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[20 Bom. 759

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[20 Bom. 354
[24 Calc. 440

——, **s. 114.**

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—RECOVERY OF IMMOVEABLE PROPERTY.

[17 Mad. 216

——, **s. 116.**

See LANDLORD AND TENANT — EJECTMENT—NOTICE TO QUIT.

[20 Bom. 759

——, **s. 117.**

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[20 Bom. 354

See LEASE—CONSTRUCTION.

[17 Mad. 98

——, **s. 127.**

See GIFT.

[20 Mad. 147

——, **s. 131.**

See LAND REGISTRATION ACT, s. 78.

[23 Calc. 87

——, **s. 132.**—*Assignment of debt—Notice to debtor of assignment—Service of the summons in suit for debt—Statute 37 Vict. cap. 60, s. 25.*] Under s. 132 of the Transfer of Property Act (IV of 1882), the assignee of a debt is under no obligation to give notice of the assignment to the debtor. All that is required is that the debtor shall become aware of it, and it is sufficient if he becomes aware of it on being served with a writ in a suit by the assignee. *Lala Jugdeo Sahai* v. *Brij Behari Lal*, I. L. R. 12 Calc. 505; *Subbammal* v. *Venkatarama*, I. L. R. 10 Mad. 289; and *Kalka Prasad* v. *Chandan Singh*, I. L. R. 10 All. 20, followed. RAGHO *v.* NARAYAN.

[21 Bom. 60

1.—s. 135.— *Actionable claim — Mortgage-bond hypothecating immoveable property.*] *Per* PETHERAM, C. J., NORRIS, O'KINEALY, and GHOSE, JJ. (PRINSEP, J., dissenting) —The right to recover a loan secured by a mortgage of immoveable property is an "actionable claim" within the provisions of s. 135 of the Transfer of Property Act. *Per* PETHERAM, C. J., NORRIS, and GHOSE, JJ.—Where an actionable claim has been assigned, the debtor may be discharged from all liability by payment to the buyer of the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it; provided that such payment is made at any time before a judgment of a competent Court has been delivered affirming the claim, or before the claim has been made clear by evidence and is ready for judgment; but if such payment is not made before the period mentioned, the assignee is entitled to judgment for the whole debt. *Per* PRINSEP, J.—The provisions of s. 135, cl. (*d*), refer to a state of things existing at the time of the assignment and not at the time of the enforcement of the payment of the debt. *Jani Begam* v. *Jahangir Khan*, I. L. R. 9 All. 476; and *Nilakanta* v. *Krishnasami*, I. L. R. 13 Mad. 225, approved of; *Rajendra Narain Bagchi* v. *Watson & Co.*, I. L. R. 18 Calc. 510, referred to. *Per* O'KINEALY, J.—Clause (*d*) of s. 135 refers to circumstances arising before the transfer of the actionable claim, and cls. (*a*), (*b*) and (*c*) refer to circumstances coming into existence at the time of the transfer. MUCHIRAM BARIK *v.* ISHAN CHUNDER CHUCKERBUTTI.

[21 Calc. 568

2.—s. 135.—*Mortgage — Actionable claim — Assignment of mortgage — Liability of mortgagor—Steps to be taken by mortgagor to obtain benefit of s. 135.*] A mortgage is an actionable claim under s. 135 of the Transfer of Property Act. In order to obtain the benefit of that section the mortgagor must pay "the price and incidental expenses, &c., with interest" into Court either or before the action—*Muchiram Barik* v. *Ishan Chunder Chuckerbutti*, I. L. R. 21 Calc. 568, followed. Where a mortgagor some months after suit was brought tendered the amount due, on the assignment of the mortgage to the assignee, and the tender was refused, and no actual payment was made into Court:—*Held* by PETHERAM, C. J., NORRIS, and O'KINEALY, JJ. (affirming the judgment of HILL, J.) that under the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

circumstances the mortgagor was not entitled to the benefit of s. 135. RUSSICK LALL PAL *v.* ROMANATH SEN.

[21 Calc. 792

3.—s. 135.—*Assignment of mortgagee's rights under his mortgage—Actionable claim.*] An assignment of a mortgagee's rights under a mortgage is not an assignment of an "actionable claim" within the meaning of s. 135 of the Transfer of Property Act (IV of 1882). MOTI RAM *v.* JETH MAL.

[16 All. 313

4.—s. 135.—*Actionable claim—Rights of usufructuary mortgagee whose mortgagor has failed to put him in possession of the mortgaged property—Assignment of mortgagee's rights.*] The transfer by a usufructuary mortgagee, whose mortgagor has failed to give him possession of the mortgaged property of his rights as such mortgagee against his mortgagor is a transfer of an actionable claim within the meaning of s. 135 of the Transfer of Property Act (IV of 1882). RANI *v.* AJUDHIA PRASAD.

[16 All. 315

5.—s. 135. — *Assignment of an actionable claim—Suit by the assignee—Recovery of the full amount of debt.*] *V* owed a sum of Rs. 483 to *G*, who assigned the debt to the plaintiff for Rs. 200. The plaintiff sued *V* to recover the whole amount:—*Held*, that under s. 135 of the Transfer of Property Act (IV of 1882) the plaintiff was entitled to recover the whole amount of the debt. VISHNU MAHADEV SONAR *v.* DAGADU.

[19 Bom. 290

6.—s. 135. — *Actionable claim — Mortgage—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidential expenses.*] Where the debtor without denying the claim offers to pay the purchaser the actual price paid by him with interest and expenses of the sale and merely disputes the amount of these items:—*Held*, that such a case does not come under the exception in cl. (*d*) of s. 135 of the Transfer of Property Act, and the first paragraph of that section applies:—*Held*, also, that it is not necessary to deposit the money in Court in order to gain the benefit of s. 135 of the Transfer of Property Act. DEBENDRA NATH MULLICK *v.* PULIN BEHARY MULLICK.

[23 Calc. 713

7.—s. 135.—*Actionable claim—Assignment of simple mortgage before due date.*] The term "actionable claim" as used in s. 135 of Act IV of 1882, means a claim in respect of which a cause of action has already matured, and which, subject to procedure, may be enforced by suit:—*Held*, that the assignment for value of a simple mortgage before the due date of the mortgage is not a sale of an actionable claim within the meaning of s. 135 of Act IV of 1882. *Rani* v. *Ajudhia Prasad*, I. L. R. 16 All. 315, referred to and explained. SHIB LAL *v.* AZMAT-ULLAH.

[18 All. 265

8.—s. 135, cl. (d).—*Mortgage—Actionable claim—Transfer of Property Act, s. 84—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidental expenses.*] A debtor claiming the benefit of s. 135 of the Transfer of Property Act (IV of 1882) is discharged of his liability if he pays or offers to pay at any time before final judgment the amount actually paid with interest and incidental expenses. *Muchiram Barik* v. *Ishan Chunder Chuckerbutti*, I. L. R. 21 Calc. 568, followed. The amount of interest is governed by s. 84 of the Transfer of Property Act. DEBENDRA NATH MULLICK *v.* PULIN BEHARY MULLICK.

[24 Calc. 763

9.—s. 135 and s. 139. — *Insolvent Act (Statute 11 and 12 Vic. cap. 21), s. 86—Purchaser of scheduled debts—Right of purchaser to be paid full amount of such debt.*] An insolvent having filed his schedule in April, 1881, obtained his personal discharge in September, 1881, and on the same day judgment was entered up against him for the amount of his scheduled debts under s. 86 of the Insolvent Act (11 and 12 Vict. cap. 21). The schedule contained the names of thirteen creditors. The insolvent afterwards settled with four of them. The remaining nine, whose aggregate claims amounted to Rs. 1,180-7-0, sold their claims. Certain assets belonging to the insolvent's estate having subsequently come into the hands of the Official Assignee, the purchasers claimed to be paid the full amount of the scheduled debts which they had bought. It appeared that the debts in question were debts incurred on certain promissory notes passed by the insolvent. The insolvent contended that under s. 135 of the Transfer of Property Act (IV of 1882) the purchasers were only entitled to the amount which they had actually paid for the debts they had bought:—*Held*, that they were entitled to be paid the full amount of the scheduled debts. If the debts at the time of purchase were to be regarded as debts in respect of promissory notes, s. 139 of the Transfer of Property Act applied, and if the claim was under the judgment entered up against the insolvent, then cl. (*d*) of s. 135 applied. IN THE MATTER OF RUNCHOD KHUSHAL.

[21 Bom. 572

——, s. 139.

See s. 135.

[21 Bom. 572

TRANSLATIONS.

See COPYRIGHT.

[19 Bom. 55

TREASURE-TROVE.

—Right of a talukdar in Gujarat to treasure trove — Rights of Government — Treasure Trove Act (VI of 1878)—Criminal Procedure Code (1882), ss. 523 and 524—Property placed at the disposal of Government.] A bag containing Rs. 248-2-0 and a gold ring was found buried in a field under circumstances which created suspicion of the commission of an offence. The District Magistrate called for claimants to come forward under s. 523 of the Code of Criminal Procedure (Act X of 1882). Thereupon the plaintiff put in his claim, alleging that, as *talukdar* and owner of the soil in which the property was found, he was entitled to the property. His claim was rejected, and an order was passed under s. 524 of the Code placing the property at the disposal of Government. The *talukdar* then sued the Secretary of State for India in Council to recover the property in dispute. The Joint Judge awarded the claim:—*Held*, reversing the decree of the lower Court, that, in the absence of any evidence to prove the *talukdar's* right to treasure-trove either by a grant or prescription, the property belonged to Government, the Indian Treasure Trove Act (VI of 1878) being inapplicable, as no notice was given by the finder, nor were any proceedings taken under it. SECRETARY OF STATE FOR INDIA *v.* VAKHATSANGJI MEGHRAJJI.

[19 Bom. 668

TREES.

See PRESCRIPTION—EASEMENTS—TREES.

[19 Bom. 420

——, Document giving right to cut and enjoy.

See REGISTRATION ACT, S. 17.

[20 Mad. 58

—— growing on land.

See LIMITATION ACT, ART. 144—IMMOVEABLE PROPERTY.

[19 Bom. 207

—— growing on land, Liability for cutting.

See MASTER AND SERVANT.

[23 Calc. 922

—— growing on land, Right to.

See BOMBAY REVENUE JURISDICTION ACT, S. 4.

[18 Bom. 319

See LANDLORD AND TENANT—PROPERTY IN TREES, WOOD, &C.

[22 Calc. 742, 744 note, 746 note, 748 note, 751 note

[23 Calc. 209, 854

——, Removal of, and for ejectment, Suit for.

See LIMITATION ACT, ART. 32.

[24 Calc. 160

TREES—*concluded.*

——, Right to cut.

See FOREST ACT, SS. 75 AND 76.

[18 Bom. 670

See PRESCRIPTION—EASEMENTS—TREES.

[19 Bom. 420

TRESPASS.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 2.

[21 Calc. 528

See CIVIL PROCEDURE CODE, S. 424.

[24 Calc. 584

See CASES UNDER CRIMINAL TRESPASS.

See MADRAS POLICE ACT, S. 21.

[17 Mad. 37

See MISJOINDER OF PARTIES.

[19 Mad. 335

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

[19 All. 153

—— on burial ground.

See RELIGION, OFFENCES RELATING TO.

[18 All. 395

TRESPASSER.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[18 All. 361

See MESNE PROFITS—RIGHT TO, AND LIABILITY FOR, MESNE PROFITS.

[19 Mad. 145

See TITLE—EVIDENCE AND PROOF OF TITLE.

[19 Bom. 828

——, Dispossession by.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[19 All. 34

See TRANSFER OF PROPERTY ACT, S. 68.

[19 All. 191

——, Effect of settlement with.

See SERVICE TENURE.

[18 Bom. 22

——, Suit to eject.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[16 All. 325

See LANDLORD AND TENANT — EJECTMENT—GENERALLY.

[19 Bom. 138

See ONUS OF PROOF—EJECTMENT.

[19 Bom. 803

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[18 Bom. 721

TROVER.

See HUNDI.

[18 Bom. 570

TRUST.

See DEED—CONSTRUCTION.

[20 Bom. 310

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[18 Mad. 266

See LIMITATION ACT, s. 10.

[16 All. 256
[18 Mad. 266
[20 Bom. 511
[20 Mad. 398

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[19 All. 277
[L. R. 24 I. A. 10

See RIGHT OF SUIT — CHARITIES AND TRUSTS.

——, Breach of, Loss occasioned by.

See LIMITATION ACT, s. 10.

[20 Mad. 398

——, Scheme of management for.

See ENDOWMENT.

[21 Bom. 556

——, Suit relating to.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TRUSTS.

[18 Mad. 252

——, Suit to set aside.

See LIMITATION ACT, ART. 120.

[20 Bom. 511

1.—*Charitable trust—Will—Deeds not carrying out will—Misapplication of funds—Mistake—Liability of trustees—Limitation Act (XV of 1877), s. 10, and Sch. II, Art. 120—Fraud—Accounts—Discretion of Court to order accounts—Jurisdiction of High Court where charity established by will is outside the jurisdiction—Advocate-General, Right of—Decree in prior suit brought by trustees of charity—Civil Procedure Code* (1882), *s.* 43.] One *B R*, a Jain, died in February, 1863, leaving a will. His widow *P* (defendant No. 1) obtained letters of administration with the will annexed. The testator died possessed (*inter alia*) of a half share of certain property in Bombay known as the "Bhimpura property." The remaining half share belonged to two other persons, *viz.*, *H D* and *M T*. By his will the testator directed that a moiety of the rental of his half share should be spent on the *sadharm* (charitable or religious) endowment of a temple at Jackho in Cutch, and the other moiety thereof in establishing two *sadavarats*, one at Jackho and the other in Palitana

TRUST—*continued.*

He also set apart a sum of Rs. 1,26,000, of which Rs. 1,01,000 were to be expended in building a temple at Jackho, and the balance of Rs. 25,000 in erecting a market near the temple at Jackho, or, if that was impossible, it was to be spent in Palitana. The plaint complained that of the Rs. 1,26,000 about Rs. 60,000 had been spent in buying a property in Bombay, called the "school property," for the purpose of establishing a school there, and about Rs. 50,000 had been expended in erecting a temple at Jackho, but that nothing had been done with the balance, nor had a market been established at Jackho. All that had been done there was to erect three shops which cost about Rs. 2,000. The plaintiff further stated that in 1868, *P* (defendant No. 1) had made over the "school property" and the "Bhimpura property" to three trustees, on trusts not strictly in accordance with the testator's will as above set forth. Under this deed the trustees were to apply one moiety of the net rents (1) in *sadavarat* or alms-giving at Jackho and Palitana; (2) in feasting the caste people in Bombay and Jackho annually; (3) in the worship called *satarbhadi* at the *derasar* (temple) in Bombay and Jackho; and (4) in entertaining and clothing the *gorip* (poor) in Bombay and Jackho. Of the remaining moiety of the rents; (5) one-half was to go to *sadharm* (charities) of the *derasar* (temple) at Jackho; and (6) the other half to charities at such places as the trustees should think fit. In the following year, *viz.*, on the 17th April, 1869, *P* (defendant No. 1) and the owners of the other moiety of the "Bhimpura property" conveyed the whole of that property to trustees, who were to apply a moiety of the rents (which was to be considered as rent from *P's* share of the property) (1) in *sadavarat* and alms-giving at Jackho and Palitana; (2) in feasting the caste people in Bombay and Jackho annually on the anniversary of *B R's* death; (3) in the worship of the *derasar* called *satarbhadi*, and in the entertainment and clothing of the *gorip* (poor) in Bombay and Jackho. The deed also directed the application of the rents of the other moiety of the "Bhimpura property," part of which was to go to a temple at Tera in Cutch and part to another temple at Jackho. This later deed, it will be observed, omitted altogether trusts (5) and (6) of the earlier one of 1868 in favour of *sadharm* for the temple of Jackho, and for *sadharm* generally. The trustees appointed by the two deeds were not the same, though some of the trustees of the first were also the trustees of the second. The second deed did not recite or in any way refer to the first. At the date of suit all the trustees named in the deeds were dead except the second defendant. By subsequent deeds, however, new trustees had been appointed, and they were all parties to the present suit. Defendants Nos. 2, 3, 4, 5, 6 and 7 were trustees of the Bhimpura property, and defendants Nos. 8, 9, 10 and 11 of the school property. The plaint filed on the 10th March, 1892, at the relation of two members of the Jain community of Cutch prayed that the charitable trusts of the testator's will might be carried out, and sought for accounts against the widow of the testator and the

TRUST—*continued.*

trustees of both the deeds, and for a scheme, &c.:—*Held*, that the High Court of Bombay had jurisdiction to make a decree declaring the trusts upon which the trustees of the deed of October, 1868, held the property comprised in that deed, and for rectifying the deed in accordance with such declaration, but that the Court could not go further in settling a scheme. *Semble:* When money is bequeathed for the purpose of founding a charity outside the jurisdiction, the Court hands the money to the trustees named by the testator, leaving it to the Courts of the country in which the charity is to be established to settle the scheme:—*Held*, also, that the suit was not barred by limitation. It was not one for rectification of the deed of 1868, but rather one against *P* (defendant No. 1) and her assigns, the trustees of the deed of 1868 and 1869, for the purpose of following the trust property in their hands and having it applied to the proper purposes of the trust, and therefore came within s. 10 of the Limitation Act (XV of 1877). Charges of fraud and dishonesty made against trustees of a charity must be established at the hearing of the case, and cannot be allowed to be reserved and proved subsequently in the course of taking accounts. Where the trust-deed of a charity executed subsequently to the death of a testator under whose will the charity was established, does not strictly conform to the provisions of the will, it is not the practice of the Court, when the discrepancy has been made by mistake, to visit the past consequences of the mistake upon the trustees. The plaintiff in this suit demanded an account from *P* of the Bhimpura property from the testator's death to the execution of the deed of the 13th October, 1868, and of the school-house property from the date of its purchase to the same time, and also an account against the trustees of the deed of 17th April, 1869, of the income of the Bhimpura property, and of its application:—*Held*, that accounts ought not to be required from *P*. She had made over the property in question to trustees in 1868. There was no evidence that she had ever used any of the income for her own purposes, and the presumption was that she had faithfully discharged her duty. The account was probably barred by Art. 120 of the Limitation Act (XV of 1877). The trustees of the deed of 1869 had paid over the income received by them to the trustees of the earlier deed of 1868, who were entitled to receive it; and therefore no account would be decreed against them. The plaintiff further prayed for an account against the representatives of *R B*, who had been trustee of the deed of 1868 from the date of its execution to his death in 1889. Under a decree passed in a previous suit (No. 113 of 1889), dated the 10th August, 1893, brought by the trustees, they had received from *R B's* estate the balance which in that suit they had claimed to be due from him to the charity. In that suit the trustees had not asked for an account against him:—*Held*, that the Advocate-General as plaintiff in the present suit was barred by the decree in that suit under s. 43 of the Civil Procedure Code (Act XIV of 1882). The trustees having then omitted to ask for an account could not sue again. The Advocate-General represented the same interests as

TRUST—*concluded.*

they did, and was therefore equally bound. Even, however, if that were not the case, the Court in the exercise of its discretion would not direct the account asked for. ADVOCATE-GENERAL OF BOMBAY *v.* BAI PUNJABAI.

[18 Bom. 551

2.—*Application by trustees to raise money by mortgage of trust property—Sanction of Court.*] A testator by his will devised property in Bombay to trustees on certain religious and charitable trusts. The income of the property was more than was required for the purposes of the trust, and the trustees had a surplus of Rs. 19,000 in their hands. They were obliged to pull down a certain *chawl* which stood upon the land for the purpose of rebuilding upon it, and they proposed, with a view to improve the property, to erect a larger and more substantial building than the former one. They expended the surplus of Rs 19,000 which was on their hands, but found that to complete the work a further sum of Rs. 20,000 was necessary. This they proposed to raise by mortgaging the trust property. They calculated that the whole mortgage-debt would be paid off out of the surplus rents of the trust property within three years. They filed this suit, praying that the Court would sanction the proposed mortgage. The Court, however, refused its sanction, and dismissed the suit. DINSHAW NOWROJI BODE *v.* NOWROJI NASARWANJI BODE.

[20 Bom. 46

TRUST-DEED.

See LIMITATION ACT, S. 10.

[20 Bom. 511

See STAMP ACT, SCH. I, ART. 54.

[20 Bom. 210

TRUST-PROPERTY.

See COURT-FEES ACT, S. 19D.

[23 Calc. 980

See HINDU LAW—PARTITION—PROPERTY LIABLE TO PARTITION.

[19 All. 428

TRUSTEE.

See COSTS—TAXATION OF COSTS.

[18 Bom. 189
[20 Bom. 301

See MAHOMEDAN LAW—ENDOWMENT.

[18 Bom. 401

See CASES UNDER TRUST.

——, Application for directions by.

See TRUSTS ACT, S. 34.

[18 Mad. 443

——, Appointment of.

See ACT XX OF 1863.

[17 Mad. 212
[19 Mad. 285

TRUSTEE—*concluded.*

See APPEAL—ACTS—ACT XX OF 1863.

[19 Mad. 285

——, **Appointment of, Prayer for.**

See VALUATION OF SUIT—SUITS.

[19 All. 60

——, **Assignment of property to.**

See DEBTOR AND CREDITOR.

[19 Bom. 12

——, **Commission allowed to.**

See WILL—CONSTRUCTION.

[24 Calc. 44

——, **Nomination of.**

See ENDOWMENT.

[18 All. 227

——, **Right of, to sue.**

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[20 Mad. 162

[L. R. 24 I. A. 73

See DEBTOR AND CREDITOR.

[20 Mad. 91

——, **Suit by, to eject trespasser.**

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[18 Bom. 721

——, **Suit for removal of.**

See ACT XX OF 1863, S. 14.

[19 All. 104

See ENDOWMENT.

[18 All. 227

[21 Bom. 556

See LIMITATION ACT, ART. 134.

[24 Calc. 418

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

[17 Mad. 462

[21 Bom. 48

[24 Calc. 418

See VALUATION OF SUIT—SUITS.

[19 All. 104

TRUSTS ACT (II OF 1882).

——, **s. 34.** — *Application for directions by trustees of charitable institution—Questions of detail and difficulty—Procedure.*] The management of the Doveton charities is vested in a committee of management, who are empowered under the trust deed to require the trustees of the funds of the charities to invest the trust-funds in excess of two lakhs of rupees "in the purchase or building of any additional land, building and premises." Certain buildings having been erected under these provisions of the trust-deed were now stated to be in urgent want of repair. The current income of the charities was not sufficient to meet the cost of carrying out the repairs, and the committee of management and the trustees were agreed that a sum of Rs. 8,700 in the hands of the latter (in excess of two lakhs of rupees) should be employed in carrying out this work. The trustees now applied to the High Court under the Trusts Act, s. 34, for its opinion on the question whether this should be done:—*Held*, that the question was not one with which the Court could deal under the Trusts Act, s. 34. The Court (SUBRAMANIA AYYAR, J.) was of opinion that the proposed expenditure could, on the Court being satisfied of its necessity, be sanctioned, if the matter came before it in the form of a suit in its original jurisdiction; and that in the exercise of such jurisdiction the Court has power to deal with a case like this hardly admitted of doubt. IN RE MADRAS DOVETON TRUST FUND.

TRUSTS ACT (II OF 1882)—*continued.*

[18 Mad. 443

——, **s. 49.**

See ACT XX OF 1863.

[17 Mad. 212

——, **s. 55.**

See APPEAL—DECREES.

[19 All. 131

——, **ss. 60 and 61.**

See APPEAL—DECREES.

[19 All. 131

——, **ss. 63 and 64.**—*Trust not established.*] A claim made for a share of property by inheritance from a deceased relation who had been in joint possession of it with the defendant, was met by the defence that the estate had been jointly held for religious and charitable purposes under a will, the deceased having had no beneficial, or heritable, interest. The defendant alleged that the original owner of the property had bequeathed the property in trust for these purposes. The claimant alleged a revocation of the will, and denied that there was such a trust. The judgment of the High Court, decreeing the claim, observed that, even assuming that there had been a trust under the will, recognised by the deceased and the defendant, the property which had come into their possession had been by them appropriated, from the first, to their own purposes, and had been so long held by them adversely to the trust title, that the defendant could not now allege that there was no beneficial interest transmissible by inheritance. Upon this the Judicial Committee pointed out that no trustee could have actually acquired a title, by such an appropriation against the trust: Indian Trusts Act, 1882, ss. 63 and 64. They added that, at the same time, the judgment of the High Court had come to the right conclusion, for the will, and the trust alleged, had not been established. BITTO KUNWAR *v.* KESHO PRASAD MISR.

[19 All. 277

[L. R. 24 I. A. 10

TRUSTS ACT (II OF 1882)—*concluded.*

——, s. 74.

See APPEAL—DECREES.

[19 All. 131

——, s. 91.

See VENDOR AND PURCHASER—INVALID SALES.

[18 Mad. 43

UNCHASTITY.

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.

[22 Calc. 347

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE.

[19 Mad. 6

UNDUE INFLUENCE.

See ACQUIESCENCE.

[17 Mad. 275

See MAHOMEDAN LAW—ENDOWMENT.

[22 Calc. 324

[L. R. 22 I. A. 4

UNLAWFUL ASSEMBLY.

See CHARGE—FORM OF CHARGE.

[21 Calc. 827, 955

See CHARGE TO JURY—MISDIRECTION.

[21 Calc. 955

See RIOTING.

[24 Calc. 686

1.—*Rioting armed with a deadly weapon—Common object of unlawful assembly, Statement of, in charge—Penal Code, ss.* 147, 148, 149 *and* 304—*Error in charge misleading accused—Criminal Procedure Code* (1882), *s.* 225.] Before a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge sheet:—*Held*, that inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged, and which consequently the accused had not had an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section. SABIR *v.* QUEEN-EMPRESS.

[22 Calc. 276

UNLAWFUL ASSEMBLY—*concluded.*

2.—*Common object—Murder—Prosecution of common object—Penal Code, s.* 149.] Neither of the cases of *Queen* v. *Sabed Ali*, 11 B. L. R. F. B. 347; 20 W. R. Cr. 5; and *Hari Singh* v. *The Empress*, 3 C. L. R. 49, lays down any hard-and-fast rule as to the circumstances under which one member of an unlawful assembly can be deemed guilty of an offence committed by another under the provisions of s. 149 of the Penal Code, and every case must be decided on its own merits. In dealing with such cases, while, on the one hand, it is necessary for the protection of the accused that he should not, merely by reason of his association with others as members of an unlawful assembly, be held criminally liable for offences committed by his associates, which he himself neither intended, nor knew to be likely to be committed. On the other hand, it is equally necessary for the protection of the peace that members of an unlawful assembly should not lightly be let off from suffering the penalties for offences for which, though committed by others, the law has made them punishable by reason of their association with the actual offender with one common object. Those two cases respectively emphasise the necessity of keeping these considerations in view. Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of s. 149 may be different on different members of the same unlawful assembly. JAHIRUDDIN *v.* QUEEN-EMPRESS.

[22 Calc. 306

UNSOUNDESS OF MIND.

See INSANITY.

[23 Calc. 604

See LUNATIC.

[18 Mad. 472

USAGE.

See CASES UNDER CUSTOM.

——, Local.

See HUNDI.

[21 Bom. 294

USE AND OCCUPATION.

——, Decree for.

See PLAINT—AMENDMENT OF PLAINT.

[22 Calc. 752

——, Suit for damages for.

See MUNSIF, JURISDICTION OF.

[23 Calc. 425

USER.

—Long uses by tenants of a plot of their landlord's land as a threshing floor—Conditions or contract of tenancy—Presumption.] On evidence that a tenant has for a great numbers of years used a particular piece of the zemindar's land along with other tenants as a threshing floor, it is competent to the Court to find, there being no evidence to the contrary, that the right to use the plot of land for that purpose was part of the contract of tenancy. *Udit Singh* v. *Kashi Ram*, I. L. R. 14 All. 185, distinguished. DALEL *v.* BHAJJU.

[16 All. 181

USUFRUCTUARY MORTGAGE.

See MORTGAGE—USUFRUCTUARY MORTGAGE.

USUFRUCTUARY MORTGAGEE.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[17 All. 222

USURY.

See CASES UNDER HINDU LAW—USURY.

VACATION OF HIGH COURT.

See CIVIL PROCEDURE CODE, S. 307.

[20 Bom. 745

VAKALATNAMA.

See PLEADER—APPOINTMENT AND APPEARANCE.

[16 All. 240
[20 Bom. 198

VAKIL, OPINION EXPRESSED BY, IN ARGUMENT.

See PLEADER—AUTHORITY TO BIND CLIENT.

[18 Mad. 73

VALUATION OF APPEAL.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[18 All. 196
[24 Calc. 30

See COURT-FEES ACT, SCH. II, ART. 11.

[17 All. 238

See PRIVY COUNCIL, PRACTICE OF—VALUATION OF APPEAL.

[22 Calc. 434
[L. R. 22 I. A. 68

VALUATION OF SUIT.

Col.

1. Suits ...1294
2. Appeals ...1297

VALUATION OF SUIT—*continued.*

See MUNSIF, JURISDICTION OF.

[21 Calc. 550
[19 Mad. 56

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION.

[17 All. 51

——, Objection to.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[18 Mad. 418

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[18 Mad. 418

(1) SUITS.

1.—*Court-Fees Act* (*VII of* 1870)—*Suit for partition and for possession of share.*] The stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one on the value of the share. BALVANT GANESH *v.* NANA CHINTAMON.

[18 Bom. 209

2.—*Suit for partition of family property—Valuation for purposes of jurisdiction—Court-Fees Act* (*VII of* 1870), *s.* 7, *cl.* (*iv*) *b.—Suits Valuation Act* (*VII of* 1887), *s.* 8.] In a suit by a member of a joint Hindu family praying for a partition of the family property and for the delivery to the plaintiff of his share, the value of the suit for the purposes of jurisdiction is the amount at which the plaintiff values his share. VELU GOUNDAN *v.* KUMARAVELU GOUNDAN.

[20 Mad. 289

3.—*Court-Fees Act* (*VII of* 1870), *ss.* 5 *and* 7, *cls.* 5 *and* 6—*Suit for pre-emption of separate plots of land not being a fractional share of a revenue-paying unit.*] *Held*, that in a suit for pre-emption in respect of separate plots of land which did not constitute any definite fraction of a distinct revenue-paying area and were not themselves separately assessed to revenue, the Court-fee should be paid on the market value of the land in suit, and not, as is the case where the suit is for a definite fractional share, on five times the Government revenue. REFERENCE UNDER THE COURT-FEES ACT, 1870, S. 5.

[16 All. 493

4.—*Court-Fees Act* (*VII of* 1870), *ss.* 7 (*ix*) *and* 17—*Redemption suit against mortgagee in possession—Arrears of rent covenanted for, to be deducted from the mortgage amount.*] In a redemption suit against a mortgagee in possession, when the mortgagee has not paid rent which has been stipulated for, and the plaintiff asks for an account in taking which the arrears of rent should be deducted from the mortgage amount:—*Held*, that the Court-fee should be computed according to the principal sum expressed to be secured by the mortgage. EACHARAN PATTER *v.* APPU PATTER.

[19 Mad. 16

VALUATION OF SUIT—*continued.*

(1) SUITS—*continued.*

5.—*Suit for share of profits of partnership after winding up and adjustment of accounts—Contract Act, s.* 265—*Court-Fees Act* (*VII of* 1870), *s.* 7, *cl.* 4—*Suits Valuation Act* (*VII of* 1887), *s.* 8—*Jurisdiction of Munsif.*] In suits brought for the several shares of the plaintiffs in the profits of a partnership, after the partnership had been determined and an adjustment of accounts made:—*Held* (NORRIS and BANERJEE, JJ., RAMPINI, J., dissenting), that under the provisions of s. 7, para. iv, cl. (*f*) of the Court-Fees Act (VII of 1870), and s. 8 of the Suits Valuation Act (VII of 1887), the suits were properly brought in the Munsif's Court. *Ladubhai Premchand* v. *Revichand Venichand*, I. L. R. 6 Bom. 143, followed. DHANI RAM SHAHA *v.* BHAGIRATH SHAHA.

[22 Calc. 692

6.—*Court-Fees Act* (*VII of* 1870), *s.* 7, *cls.* 1—9—*Suit by the mortgagee against the heir of the mortgagor for recovery of the mortgage-debt by sale of mortgaged and other property—Suit for money.*] A suit instituted by the mortgagee against the heir of the original mortgagor, to have the mortgage-debt paid by sale not exclusively of the mortgaged property, but also of all the other property in the hands of such heir liable for the debts of the original mortgagor, is virtually a suit for money, and should be valued, not at the principal debt, but the entire amount including interest. KASHINATH BALLAL *v.* GANPATRO AMRITESHVAR JOSHI.

[18 Bom. 696

7.—*Suit by claimant to attached property—Declaratory decree, Suit for—Court-Fees Act* (*VII of* 1870)—*Civil Procedure Code* (1882), *ss.* 278 *and* 283.] Where a claimant whose objection under s. 278 of the Code of Civil Procedure has been disallowed, brings a suit and makes the judgment-creditor, who was trying to execute the decree, the sole defendant to the suit, a claim for a declaration that the property under attachment was the plaintiff's property and not liable to attachment in execution of the decree of the defendant, is a claim for only one declaration, and for such purposes and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment, or that the property is the plaintiff's as against the defendant's right to attach, and that the order of attachment should be cancelled. But where the person objecting under s. 278 of the Code brings his suit and makes not only the execution-creditor in the attachment proceedings, but also the judgment-debtor in those proceedings, parties to the suit, and asks for a declaration of the plaintiff's title to the property under attachment as against the judgment-debtor, and also asks for a declaration in denial of the judgment-creditor's right to bring that property to sale in execution of the judgment-creditor's decree, there are two substantial declarations asked for. MOTI SINGH *v.* KAUNSILLA.

[16 All. 308

VALUATION OF SUIT—*continued.*

(1) SUITS—*continued.*

8.—*Bengal, N.-W. P., and Assam Civil Courts Act* (*XII of* 1887), *ss.* 19 *and* 21—*Suit claiming property under the Civil Procedure Code, s.* 283.] When in a suit under s. 283 of Act XIV of 1882 the claimant-objector makes the judgment-debtor or his representative a party as defendant to the suit, the property attached must be regarded as the subject-matter of the suit, and the value of the suit within the meaning of ss. 19 and 21 of Act XII of 1887, must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realised by the sale of property in execution of the decree. *Gulzari Lal* v. *Jadaun Rai*, I. L. R. 2 All. 199; *Durga Prasad* v. *Rachla Kuar*, I. L. R. 9 All. 140; *Krishnama Chariar* v. *Srinivasa Ayyangar*, I. L. R. 4 Mad. 339; and *Modhusudun Koer* v. *Rakhal Chunder Roy*, I. L. R. 15 Calc. 104, distinguished; *Mahabir Singh* v. *Behari Lal*, I. L. R. 13 All. 320; and *Madho Das* v. *Ramji Patak*, I. L. R. 16 All. 286, referred to. DWARKA DAS *v.* KAMESHAR PRASAD.

[17 All. 69

9.—*Court-Fees Act* (*VII of* 1870), *s.* 17—*Suit by reversioners to declare various alienations by a Hindu widow to be invalid against them.*] When reversioners sue to have declared invalid as against them alienations made by a Hindu widow, a Court fee of Rs. 10 must be paid in respect of each of the alienations in question. DAIVACHILAYA PILLAI *v.* PONNATHAL.

[18 Mad. 459

10.—*Court-Fees Act* (*VII of* 1870), *s.* 7, *cl.* 4 (*c*), *Sch. II, Art.* 17, *cl. iii—Suit for a declaration that a decree obtained by defendant against plaintiff was null and void—Decree for declaration without consequential relief.*] A suit in which the only prayer is to have a decree set aside as null and void is a suit for a declaratory decree without consequential relief, and Art. 17, cl. 3, and not s. 7, cl. 4 of the Court-Fees Act VII of 1870, is applicable to it. SHRIMANT SAGAJIRAO KHANDERAV *v.* SMITH.

[20 Bom. 736

11.—*Court-Fees Act* (*VII of* 1870), *Sch. II, Art.* 17, *cl. vi—Civil Procedure Code, s.* 539—*Prayer for appointment of plaintiffs as trustees—Declaratory decree, Suit for.*] A prayer in a plaint purporting to be a plaint under s. 539 of the Code of Civil Procedure, that the plaintiffs themselves may be appointed trustees, is not a prayer for possession requiring to be stamped at the value of the trust property, but is a prayer for relief falling within Art. 17, cl. vi, of the second schedule to Act VII of 1870. *Sonachala* v *Manika*, I. L. R. 8 Mad. 516; *Delroos Banoo Begum* v. *Asghur Ally Khan*, 15 B. L. R. 167; and *Omrao Mirza* v. *Jones*, I. L. R. 10 Calc. 599, referred to and distinguished. THAKURI *v.* BRAMHA NARAIN.

[19 All. 60

12.—*Court-Fees Act* (*VII of* 1870), *Sch. II, Art.* 17, *cl. vi—Suit to remove a trustee of a religious*

VALUATION OF SUIT—*continued.*

(1) SUITS—*concluded.*

endowment.] *Semble :* That a suit under s. 14 of Act XX of 1863, against the superintendent of a religious endowment for misfeasance is a suit which, for the purpose of payment of Court-Fees falls within Art. 17, cl. (vi), of the second schedule of Act VII of 1870. *Delroos Banoo Begum* v. *Ashgar Ally Khan*, 15 B. L. R. 167; *Sonachala* v. *Manika*, I. L. R. 8 Mad. 516; and *Omrao Mirza* v. *Jones*, I. L. R. 10 Calc. 599, referred to. MUHAMMAD SIRAJ-UL-HAQ *v.* IMAM-UD-DIN.

[19 All. 104

13.—*Designed exaggeration of valuation—Suits Valuation Act (VII of 1887), s. 11—Munsif, Jurisdiction of—Code of Civil Procedure (1882), s. 578—Plaint, Return of—Provincial Small Cause Courts Act (IX of 1887), s. 15, sub-section 3.*] A suit was brought in the Munsif's Court, for money as well as for damages, valued at Rs. 1,004. The Munsif gave the plaintiff a decree for Rs. 900, but dismissed the claim for the balance, which was for damages. On appeal the Subordinate Judge was of opinion that the claim had been designedly exaggerated, and he therefore held that the suit was one cognizable by the Small Cause Court, and directed the plaint to be returned to the plaintiff for the purpose of presenting it to the proper Court:—*Held*, that as the suit was tried on its merits by the first Court, and the over-valuation of the suit was not found by the Appellate Court to have prejudicially affected the disposal of the suit on its merits, the objection as to jurisdiction should not have been given effect to, and therefore the Court below was wrong in directing the plaint to be returned. *Mohee Lall* v. *Kheta Ram Marwary*, 25 W. R. 76, followed; *Nanda Kumar Banerjee* v. *Ishan Chandra Banerjee*, 1 B. L. R. Ap. 91; and *Bonomally Nawn* v. *Campbell*, 10 B. L. R. 193, distinguished. HAMIDUNNISSA BIBI *v.* GOPAL CHANDRA MALAKAR.

[24 Calc. 661

(2) APPEALS.

14.—*Jurisdiction of District Judge—Valuation put by plaintiff in his plaint—Amount awarded by decree—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887).*] The pecuniary jurisdiction of a Civil Court on its appellate side is, ordinarily speaking, governed by the value stated by the plaintiff in his plaint; and if a suit, having regard to the valuation in the plaint, is within the jurisdiction, such jurisdiction is not ousted by the Court finding that a decree for a sum exceeding the limit of its pecuniary jurisdiction should be given to the plaintiff. There is nothing in Act XII of 1887 to confine the sum for which a Civil Court may pass a decree to the limit of its jurisdiction to entertain a suit. *Mahabir Singh* v. *Behari Lal*, I. L. R. 13 All. 320, referred to. MADHO DAS *v.* RAMJI PATAK.

[16 All. 286

15.—*Suits Valuation Act (VII of 1887), s. 8—Valuation for purposes of Court-fees and for purposes of jurisdiction—Suit for account—District Judge, Jurisdiction of.*] In a suit for an account the valuation entered in the plaint for the purpose of fixing Court-fees determines the question of jurisdiction, the valuation for both purposes being the same under s. 8 of Act VII of 1887. The plaintiff sued for an account, and valued the relief sought at Rs. 130. The suit was filed in the Court of a Subordinate Judge of the first class. The Subordinate Judge rejected the claim. Thereupon the plaintiff appealed to the High Court, valuing his claim in appeal at Rs. 10,500:—*Held*, that the appeal lay to the District Court, and not to the High Court. BHAGVANTRAI MUNSHI *v.* MEHTA BAJURAO.

[18 Bom. 40

16.—*Suits Valuation Act (VII of 1887), s. 8—Suits for account—Court-fee stamp—Jurisdiction of District Judge—Amount of claim as fixed by plaintiff—Relief incidental to the principal relief.*] According to s. 8 of the Suits Valuation Act (VII of 1887), in suits for taking an account the Court-fee stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff. In a suit for taking an account the plaint having contained several items which were all incidental to the chief item of relief, the plaint was held to be substantially one to have a minor plaintiffs' estate administered, that is, to have accounts taken and the accounting party ordered to pay what (if any) should be found due from him on the balance of such account. The plaintiffs having put the valuation of the suit at Rs. 130 in the plaint:—*Held*, that the High Court had no jurisdiction to hear the appeal against an order rejecting the plaint. The appeal lay to the District Court. The appeal was therefore returned for presentation in the proper Court. BAI AMBA *v.* PRANJIVANDAS DULLABHRAM.

[19 Bom. 198

17.—*Suits Valuation Act (VII of 1887), s. 8—Suit for account—Court-Fees Act (VII of 1870), s. 7 (iv), cl. (f), and s. 11—Bombay Civil Courts Act (XIV of 1869), s. 26—Jurisdiction of District Judge.*] In a suit for an account of partnership dealings, the plaintiffs valued the claim approximately at Rs. 600. The Subordinate Judge passed a decree awarding to the plaintiffs a sum of Rs. 30,830-9-2. The plaintiffs thereupon paid an additional Court-fee of Rs. 900 under s. 11 of the Court Fees Act (VII of 1870). The defendants appealed to the High Court from the decree of the Subordinate Judge. The plaintiffs objected that the appeal lay to the District Judge, and not to the High Court:—*Held*, that the value of the subject-matter of the suit exceeded Rs. 5,000; the appeal therefore lay to the High Court under s. 26 of Act XIV of 1869. IBRAHIMJI ISSAJI *v.* BEJANJI JAMSEDJI.

[20 Bom. 265

18.—*Suit for declaration of title and for injunction—Consequential relief—Court-Fees Act (VII of 1870), s. 7, cl. 4—Suits Valuation Act (VII of*

VALUATION OF SUIT—*continued.*

(2) APPEALS—*continued.*

1887), *s.* 8—*Jurisdiction of District Judge.*] Where plaintiffs sued for a declaration that they were entitled to share in certain *talukdari* estates and for an injunction to restrain defendant from cutting and removing timber from certain forests, or, if the injunction was not granted, for an order to defendant to keep a correct account of the timber removed, the first class Subordinate Judge rejected the claim for want of jurisdiction: —*Held*, that the suit was one for a declaration and consequential relief under s. 7, cl. 4 (*c*) of the Court-Fees Act, and that as the claim was valued at Rs. 230 only, the appeal lay under Act VII of 1887, s. 8, to the District Court. An injunction is in the nature of consequential relief. GULABSINGJI *v.* LAKSHMANSINGJI.

[18 Bom. 100

19.—*Suit for injunction and specific performance—Suits Valuation Act (VII of* 1887), *s.* 8—*Court-Fees Act (VII of* 1870)—*Jurisdiction of District Judge—Valuation for purposes of jurisdiction.*] The provisions of s. 8 of Act VII of 1887 apply to Appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section. In a suit of the description mentioned in s. 8 of Act VII of 1887, the plaintiff valued his claim at Rs. 664 for the computation of Court-fees, and at Rs. 14,000 for purposes of jurisdiction:—*Held*, that the appeal from the decree of the Court of first instance lay to the District Court, and not to the High Court. BAI VARUNDA LAKSHMI *v.* BAI MANEGAVRI.

[18 Bom. 207

20.—*Bengal, N.-W. P. and Assam Civil Courts Act (XII of* 1887), *s.* 21, *sub-section* (1)—"*Value of the original suit.*"] Where the value of a suit was found by the lower Court to be less than Rs. 5,000, and the plaintiff contested that finding and preferred his appeal to the High Court on the valuation or Rs. 7,500 made in his plaint:—*Held*, that the words "value of the original suit" in sub-section (1), s. 21 of the Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887) did not mean the value as found by the original Court, and the appeal was rightly preferred to the High Court; that, as it did not appear in the present case, that the over-valuation was the result of any design to change the *venue* of appeal, the question whether "value" in the said section should be taken to be *bonâ fide* value need not be considered. *Lakshman Bhatkar* v. *Babaji Bhatkar*, I. L. R. 8 Bom. 31; and *Mahabir Singh* v. *Behari Lal*, I. L. R. 13 All. 320, approved. NILMONY SINGH *v.* JAGABANDHU ROY.

[23 Calc. 536

21.—*Court-Fees Act (VII of* 1870), *s.* 16, *and Sch. II, Art.* 71, *cl. iii—Declaratory decree, Suit for —Consequential relief—Right of priest to charao (offerings to idol)—Suit for arrears of maintenance.*] In a suit upon an *ekrar* executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was

VALUATION OF SUIT—*continued.*

(2) APPEALS—*continued.*

realisable from the surplus of the *charao* (offerings to the idol) and recoverable from the defendant's successors in office, the original Court passed a decree for the arrears, but refused to make the declaration. The plaintiffs appealed only against the order refusing the declaration, the memorandum of appeal bearing a Court-fee stamp of Rs. 10. The respondent objected that the declaration asked for in appeal involved consequential relief and that an *ad valorem* fee was payable by the appellant:—*Held*, the memorandum was correctly stamped under s. 16 and cl. iii, Art. 17, Sch. II of the Court-Fees Act (VII of 1870). *Venkappa* v. *Narasimha*, I. L. R. 10 Mad. 187; and *Vithal Krishna* v. *Balkrishna Janardan*, I. L. R. 10 Bom. 610, distinguished. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA.

[23 Calc. 645

22.—*Memorandum of appeal to Special Judge under Bengal Tenancy Act—Court-Fees Act (VII of* 1870), *ss.* 12 *and* 17, *Sch. II, Art.* 1, *cl. b*; *Part* II, *Art.* 17, *cl. VI—Bengal Tenancy Act, s.* 104, *cl.* 2; *s.* 108, *cl.* 2, *and s.* 189—*Joinder of parties in one application—Rule* 25 *of Rules of Government of India under Bengal Tenancy Act.*] A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2 of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue Officer's decision, making all or nearly all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of Rs. 10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code:—*Held* by a Full Bench, that the Local Government acted within the powers conferred by s. 189, cl. 1 of the Bengal Tenancy Act, in making Rule 25 of Chap. VI of the Government rules under the Act by which the landlord was authorised to join as defendants, several defendants in one application for settlement of rents:—*Held*, also, that the decision of the Special Judge did not dispose of any question relating to *valuation*, far less of any question relating to the valuation *of a suit*, and the decision was not final under s. 12 of the Court-Fees Act; and that the proceedings in this case could not properly be regarded as a *suit*, and neither Art. 17, cl. vi of Sch. II, nor s. 17 of the Court-Fees Act was applicable. The memorandum of appeal was nothing more or less than an application subject to one Court-fee of eight-annas only under Art. 1, cl. (*b*), Part II of Sch. II of the Court-Fees Act. The case of *Petu Ghorai* v. *Ram Khelawan Lall Bhukut*, I. L. R. 18 Calc. 667, was wrongly decided. UPADHYA THAKUR *v.* PERSIDH SINGH.

[23 Calc. 723

23.—*Court-Fees Act (VII of* 1870), *Sch.* I—*Relief in respect of costs—Distinct relief.*] When apart from, and independently of, any other reliefs

VALUATION OF SUIT—*concluded.*

(2) APPEALS—*concluded.*

which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal, the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purposes of the first schedule of the Court-Fees Act. IN RE MAKKI ; IN RE RAMAN.

[19 Mad. 350

VARIANCE BETWEEN PLEADING AND PROOF.

See APPELLATE COURT — EXERCISE OF POWERS IN VARIOUS CASES—PLAINT.

[19 Bom. 303

See HINDU LAW — CUSTOM — INHERITANCE.

[21 Bom. 110

See HINDU LAW — PARTITION — PARTITION OF PORTION OF PROPERTY.

[18 Bom. 611

See HINDU LAW—PARTITION — RIGHT TO PARTITION — PURCHASER FROM CO-PARCENER.

[20 Mad. 243

See PLAINT—AMENDMENT OF PLAINT.

[22 Calc. 752

[19 Bom. 303

See RELIEF.

[19 Bom. 323

See RIGHT OF SUIT—CO-SHARERS.

[18 Bom. 611

1.—*Cause of action set out in plaint—Burden of proof—Civil Procedure Code* (1882), *s.* 50—*Suit for redemption of mortgage.*] A plaintiff is only entitled to succeed upon the cause of action alleged by him in his plaint. So, where plaintiffs came into Court alleging a mortgage of the year 1854 made by their predecessor in title in favour of the defendant and seeking to redeem the mortgage of 1854, and it was found that the plaintiffs had failed to prove the mortgage of 1854, it was *held* that the plaintiffs were not entitled in that suit to a decree for redemption of other mortgages which might be found to subsist between the parties, but which formed no part of the cause of action upon which the plaintiffs came into Court. *Read* v. *Brown*, L. R. 22 Q. B. D. 128 ; *Murti* v. *Bhola Ram*, I. L. R. 16 All. 165 ; *Salima Bibi* v. *Muhammad*, I. L. R. 18 All. 131 ; *Ratan Kuar* v. *Jiwan Singh*, I. L. R. 1 All. 194 ; *Parmanand Misr* v. *Sahib Ali*, I. L. R. 11 All. 438 ; *Zingari Singh* v. *Bhagwan Singh*, Weekly Notes, All. (1889) 187; *Krishna Pillai* v. *Rangasami Pillai*, I. L. R. 18 Mad. 462 ; *Govindrav Deshmukh* v. *Ragho Deshmukh*, I. L. R. 8 Bom. 543 ; and *Eshenchunder Singh* v. *Shamachurn Bhutto*, 11 Moo. I. A. 7, referred to ; *Lahshman Bhisaji Sirsekar* v. *Hari Dinkar Desai*, I. L. R. 4 Bom. 584 ; and *Chimaji* v. *Sakharam*, I. L. R. 17 Bom. 365, dissented from. SHEO PRASAD *v.* LALIT KUAR.

[18 All. 403

2.—*Mortgage sued on not proved—Admission by defendants of mortgage right.—Right of redemption.*] The plaintiff sued to redeem a *kanom* of 1859. The *kanom* was not proved, but it appeared that the defendants in possession had in various documents admitted that they were *kanomdars* under the plaintiff's predecessor in title. The Subordinate Judge held that the *kanom* to which the admissions related could not have been executed before 1823, which was less than sixty years from the date of some of the admissions, and he passed a decree for redemption :—*Held*, that the plaintiff having failed to establish the *kanom* on which the suit was based should not have been allowed to fall back upon some other as to which the defendants had made the admissions in question. KRISHNA PILLAI *v.* RANGASAMI PILLAI.

[18 Mad. 462

3.—*Mortgage sued on inadmissible in evidence for want of registration—Secondary evidence—Inadmissible mortgage, consolidating two prior mortgages—Redemption, Right of — Decree to redeem prior mortgages.*] In a suit to redeem a mortgage of 1867 which had been lost and admittedly had not been registered, it appeared that it had been executed in consolidation of two prior mortgages, dated 1856 and 1860, respectively :—*Held* that the plaintiff was not entitled to a decree on the footing of the unregistered mortgage which could not be proved, but that he was entitled to redeem the two previous mortgages if they were found to be genuine and valid. ARUMUGAM PILLAI *v.* PERIASAMI.

[19 Mad. 160

4.—*Suit for exclusive possession—Joint ownership proved at hearing—Procedure.*] Exclusive possession can only be awarded on proof of exclusive title. If a case not alleged by the plaintiff is disclosed in the evidence, the Court can allow it to be set up, provided a specific issue is raised on it, and the defendant is given an opportunity of meeting it. PARAHSRAM *v.* MIRAJI.

[20 Bom. 569

5.—*Suit for exclusive possession—Proof of hearing of joint ownership — Procedure.*] The plaintiff sued for possession of certain land. The lower Court held that the land was the joint property of the plaintiff and defendant, but finding that the plaintiff had been in exclusive possession allowed his claim and gave him a decree. On second appeal, *held*, that exclusive possession could not be awarded unless exclusive title was proved. On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit. NANA *v.* APPA.

[20 Bom. 627

VARIANCE BETWEEN PLEADING AND PROOF—*concluded.*

6.—*Relief granted on a different ground from that asked for—Possession, Suit for.*] Plaintiffs' suit was that they were co-owners with *B* of a certain property as members of a joint-family under the Mitakshara law; that after *B's* death, a 3½ annas' share of the property was registered under the Land Registration Act in the name of *A*, the mother of *B*, although the plaintiffs were the owners in possession, and *A* was entitled only to maintenance; that a gift was made of 1½ annas' share by *A* to her daughter and daughter's son, without right, and the donees having granted a *zuripeshgi* lease in respect of that share, the *zuripeshgidars* took possession thereof. The plaintiffs, accordingly, prayed for recovery of possession by establishment of their alleged right of ownership, or, in the alternative, for a declaration that they were reversionary heirs to the estate of *B*, and, as such not bound by the gift and the *zuripeshgi* lease aforesaid. *A* died during the pendency of the suit. It was found that plaintiffs were not co-owners with *B* as alleged; but that, as reversionary heirs, they became entitled to possession upon *A's* death after the institution of the suit:—*Held*, that as the plaintiffs had claimed to recover possession in the suit, and as *A* died before the case was taken up for trial, the plaintiffs were entitled to the relief, although they asked it on a ground different from that on which they recovered judgment. RASUL JEHAN BEGUM *v.* RAM SURUN SINGH.

[22 Calc. 589

7.—*Suit for arrears of rent—Failure of plaintiff to prove alleged rate of rent—Ascertainment of proper rate—Duty of Court—Form of decree.*] In a suit for arrears of rent at certain alleged rates in which the plaintiff fails to prove the rates alleged by him, it is not the duty of the Court to ascertain what were the fair rates, unless it is asked to do so. The case of *Punnoo Singh* v. *Nirghin Singh*, I. L. R. 7 Calc. 298, does not lay down a contrary rule. RASH DHARY GOPE *v.* KHAKON SINGH.

[24 Calc. 433

VATAN.

See HEREDITARY OFFICES ACT.

See SERVICE TENURE.

[18 Bom. 22

"VATANDAR," MEANING OF.

See HEREDITARY OFFICES ACT, S. 4.

[21 Bom. 787

VATANDAR AND DEPUTY, AGREEMENT BETWEEN.

See HEREDITARY OFFICES ACT, S. 7.

[18 Bom. 752

VATANDARS ACT (BOMBAY ACT III OF 1874).

See HEREDITARY OFFICES ACT.

VENDOR AND PURCHASER.

		Col.
1.	Breach of Covenant	...1304
2.	Conditional Sales	...1304
3.	Completion of Transfer	...1305
4.	Consideration	...1306
5.	Fraud	...1306
6.	Invalid Sales	...1306
7.	Notice	...1307
8.	Purchase Money and other Payments by Purchaser	...1307
9.	Purchasers, Rights of	...1309
10.	Vendors, Rights and Liabilities of	...1310

See ATTACHMENT — SUBJECTS OF ATTACHMENT—DEBTS.

[16 All. 286

See BENAMI TRANSACTION — GENERAL CASES.

[19 Mad. 60

See BROKER.

[20 Bom. 124

See EASEMENT.

[18 Bom. 382

See HINDU LAW—ALIENATION — ALIENATION BY FATHER.

[20 Mad. 354

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.

[19 Bom. 43

See LIMITATION ACT, ART. 134.

[19 Bom. 140

See LIMITATION ACT, ART. 144—IMMOVEABLE PROPERTY.

[19 Bom. 43

See REGISTRATION ACT, S. 17.

[18 Bom. 13

See REGISTRATION ACT, S. 50.

[18 Bom. 355

(1) BREACH OF COVENANT.

1.—*Breach of covenant for title—Measure of damages.*] A purchaser evicted from his holding is entitled to recover from a vendor who has guaranteed his title the value of the land at the date of the eviction. NAGARDAS SAUBHAGYADAS *v.* AHMEDKHAN.

[21 Bom. 175

(2) CONDITIONAL SALES.

2.—*Sale with subsequent agreement for re-purchase—Mortgage by conditional sale—Suit for pre-emption—Limitation.*] On the 6th of June, 1887, one *R K* sold a certain zemindari share to *S*. On the 18th of May, 1888, *B* brought a suit for pre-emption of that share. Pending the suit, on the 6th of July, 1888, the vendor, the vendee, and the pre-emptor, entered into an agreement, by which the vendee, recognizing the pre-emptive right of the plaintiff, agreed to re-transfer the property to the vendor or the pre-emptor on payment by either of them on the full moon of Jeth in any year of the price paid by him. On the 20th of June, 1891, the vendor, affecting to treat

VENDOR AND PURCHASER—*continued.*

(2) CONDITIONAL SALES—*concluded.*

the transaction of the 6th of June, 1887, as a mortgage, made an application purporting to be under s. 83 of the Transfer of Property Act, accompanied by payment of the price of the property into Court, and prayed for redemption. The vendee refused to take out the money deposited by the vendor; and subsequently, on the 13th of November, 1891, *R K* applied for repayment to him of the said money, stating that he wished the vendee to remain in possession, and asking that the agreement of the 6th of July, 1888, might be considered null and void. On the 1st of September, 1892, one *R S* filed a suit for pre-emption of the said property:—*Held*, that the original transaction of the 6th of June, 1887, was an out-and-out sale, and was not, and could not be, by the subsequent agreement between the parties, turned into a mortgage by conditional sale; and in consequence that the suit brought by *R S* was barred by limitation. RAM DIN *v.* RANG LAL SINGH.

[17 All. 451

(3) COMPLETION OF TRANSFER.

3.—*Sale of immoveable property—Transfer of Property Act (IV of 1882), s. 54—Delivery of possession—Registration of sale-deed.*] Registration of a sale-deed constitutes a sufficient delivery of the deed to pass the interest in land contained therein. *Narain Chunder Chuckerbutty* v. *Dataram*, I. L. R. 8 Calc. 597, followed. PONNAYYA GOUNDAN *v.* MUTTU GOUNDAN.

[17 Mad. 146

4.—*Sale of immoveable property—Transfer of Property Act (IV of 1882), s. 54—Delivery of possession under deed of sale unregistered where registration is optional—Delivery of property—Share in a tank—Registration Act (III of 1887), ss. 17 and 18—Intention of parties—Question of fact—Second appeal.*] The defendants purchased a share in a tank in 1884, and the consideration being of a less amount than Rs. 100 and registration therefore optional, the deed of sale was unregistered. In 1886 the plaintiff purchased the same share from the same vendor under a registered deed of sale. It was found on the facts that the plaintiff purchased with notice of the defendants' previous purchase, and that the defendants had possession of the purchased share from the date of their purchase:—*Held* (on appeal under the Letters Patent of the High Court) by TREVELYAN, J., upholding the decision of BEVERLEY, J. (HILL, J., dissenting), that the possession obtained by the defendants was a sufficient "delivery of the property" within the meaning of s. 54 of the Transfer of Property Act. *Makhan Lall Pal* v. *Bunku Behari Ghose*, I. L. R. 19 Calc. 623, referred to. *Per* TREVELYAN, J.—It is not necessary that there should be any formal making over of the property, and the instrument has not been registered, but the intending buyer has been

VENDOR AND PURCHASER—*continued.*

(3) COMPLETION OF TRANSFER—*concluded.*

placed in possession, the effect to be attributed to the delivery of possession depends on the intention of the parties, which is a question of fact that cannot be determined on second appeal. GUNGA NARAIN GOPE *v.* KALI CHURN GOALA.

[22 Calc. 179

(4) CONSIDERATION.

5.—*Sale of sir land with covenant to relinquish ex-proprietary rights—Non-performance of illegal contract—Suit to recover consideration-money.*] A deed of sale which purports to convey to vendees the ex-proprierary rights of the vendors in *sir* lands, is an illegal contract and void as being in violation of ss. 7 and 9 of Act XII of 1881. Where, therefore, along with some zemindari land, certain *sir* lands, were sold, and the vendors purported by their sale-deed to relinquish their ex-proprietary rights in the *sir* lands, but failed to put the vendees into possession of either the zemindari or the *sir* lands, it was held that the vendees could not recover from the vendors, as compensation, the consideration money which they had paid in respect of the *sir* lands. BHIKHAM SINGH *v.* HAR PRASAD.

[19 All. 35

(5) FRAUD.

6.—*Fraudulent misrepresentation—Sale of immoveable property—Misdescription of area sold—Suit for damages—Nature of proof required.*] A purchaser of certain immoveable property sued his vendors to recover compensation or damages on account of a deficiency in the actual area of land purchased by him as compared with the area stated in his sale-deed. There was no covenant in the sale-deed to make compensation in case of misdescription:—*Held*, that the plaintiff in order to succeed must make out a fraudulent misrepresentation which he accepted as true, and which induced him to enter into the contract, and which caused him damage. *Derry* v. *Peek*, L. R. 14 Ap. Cas. 387, referred to. ABDULLAH KHAN *v.* ABDUR RAHMAN BEG.

[18 All. 322

(6) INVALID SALES.

7.—*Trust Act (II of 1882), s. 91—Specific Relief Act (I of 1877), s. 27—Purchaser with notice of prior contract to sell.*] In a suit for land it appeared that the plaintiff had obtained a registered sale-deed, comprising the property in question, from defendants Nos. 1 and 2 who had already (to the plaintiff's knowledge) contracted to sell it to another, and that the plaintiff had paid no consideration for the sale-deed, which in fact represented a collusive transaction entered into to defeat the prior contract:—*Held*, that the plaintiff was not entitled to recover. NAMASIVAYAM PILLAI *v.* NELLAYAPPA PILLAI.

[18 Mad. 43

8.—*Execution of sale-deed without consideration—Subsequent transfer for value—Transfer of Property Act (IV of 1882), s. 54.*] In a suit for land,

VENDOR AND PURCHASER—*continued.*

(6) INVALID SALES—*concluded.*

it appeared that in 1887, *A* had executed in favour of *B* a registered conveyance of the land in question, which purported to be a sale-deed, but that no consideration was in fact paid; and that *A*, who had retained possession, sold and delivered the land to *C* and *D*, and that they then discharged a mortgage which was to have been paid off by *B*. In the interval between the two transactions above referred to, the plaintiff had purchased the land from *B*, and he now alleged that the persons in possession had executed a rent agreement, in fact found to be a forgery, under the terms of which he claimed to eject them:—*Held*, that the plaintiff's claim, founded on the transaction of 1887, did not prevail against *C* and *D*. SANGU AYYAR *v.* CUMARASAMI MUDALIAR.

[18 Mad. 61

(7) NOTICE.

9.—*Sale by landlord subject to rights of tenants—Notice to purchaser of rights—Suit by tenants to enforce rights against purchaser—Limitation.*] In 1806 the East India Company granted a village to *A*, subject to the ryots' customary rights and privileges which were embodied in Regulation I of 1808, but the deed of conveyance was not passed until 1819, and it was then executed to the executors of *A* who had died in the meantime. This deed made no reference to the rights and privileges of the ryots. In 1868 the defendant purchased the village from its legal owners. In 1889, plaintiffs sued defendant for themselves and on behalf of the other ryots of the village to enforce their rights. The defendant pleaded that as the deed of conveyance of 1819 made no mention of these rights, he was not bound by them:—*Held*, that as at the time of the conveyance of the village to the defendant, the lands were in the occupation of the ryots, the defendants ought to have made inquiry as to their rights. Having failed to do this he was bound by the rights of the tenants as much as if they had been specially mentioned in the conveyance to him. *Manchanji Sorabji* v. *Kongseoo*, 6 Bom. H. C. Rep. 59, followed:—*Held*, also, that as there had been no denial of plaintiff's rights until shortly before the suit, it was not barred by limitation. AHMEDBHOY HABIBBHOY *v.* BALKRISHNA MUKUND.

[19 Bom. 391

(8) PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER.

10.—*Deposit by purchaser under contract—Contract going off through default of purchaser—Vendor's right to retain deposit.*] *Held* that where a contract for sale goes off by default of the purchaser, the purchaser cannot recover any deposit which may have been paid by him to the vendor in pursuance of the contract. *Ex parte Barrell, In re Parnell*, L. R. 10 Ch. Ap. 512; and *Howe* v. *Smith*, L. R. 27 Ch. D. 89, referred to. BISHAN CHAND *v.* RADHA KISHAN DAS.

[19 All. 489

VENDOR AND PURCHASER—*continued.*

(8) PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*continued.*

11.—*Unsuccessful denial of contract by defendant—Dismissal of suit by purchaser for specific performance for non-payment of the balance of the consideration-money within the stipulated period—Right of plaintiff to return of deposit of the part of the consideration-money paid, where specific performance is refused—Equity and good conscience—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37.*] In a suit for specific performance of a contract, the defendant denied the contract *in toto*. The lower Appellate Court, while finding that there was a contract between the parties, refused to grant specific performance on the ground that the plaintiff failed to pay the balance of the consideration money on the stipulated day, but made a decree for the refund of the deposit. On appeal by the defendant to the High Court, *held*, that inasmuch as the defendant unsuccessfully denied the contract *in toto*, and as there was no repudiation of the contract by the plaintiff, he (the plaintiff) was entitled to a refund of the deposit made by him. ALOKESHI DASSI *v.* HARA CHAND DASS.

[24 Calc. 897

12.—*Contract to purchase property in cantonment—Rights of Government in such property—Contract making no mention of Government rights—Knowledge of purchaser—Suit by purchaser for specific performance or return of earnest-money—Earnest-money when repayable—Amendment of plaint so as to claim refund of earnest-money.*] On October 12th, 1887, the first defendant executed the following agreement in favour of plaintiff with respect to certain property situated in the Poona Cantonment:—"I have agreed to sell to you . . . both my bungalows described above, including the sites and buildings, together with the compounds, rooms for servants, stables, outhouses . . . . . and I have this day received from you Rs. 5,000 as earnest-money. After the sale-deed in regard to the said bungalows is executed, I will get them transferred to your name in the Brigade-Major's office." On the same day the first defendant received from the plaintiff Rs. 5,000 as earnest-money. A notice of the proposed sale was published in the newspapers, upon which the Poona Cantonment Committee wrote to the plaintiff stating that Government possessed certain rights over the property. Plaintiff then demanded that the first defendant should obtain from Government and transfer to him a full and complete title in the property. The defendant refused, and prepared a draft deed transferring the ordinary cantonment tenure, which was a mere occupancy, and sent it to plaintiff. Plaintiff declined to accept it, and brought this suit to compel the first defendant to execute a deed transferring to him a full and complete title for possession of the property, and for rent and damages. Although apparently not arising upon the pleadings, an issue was raised by the parties as to whether by his conduct the plaintiff had forfeited his right to have the earnest-money returned to

VENDOR AND PURCHASER—*continued.*

(8) PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*concluded.*

him. This issue was, however, struck out at the trial by the Subordinate Judge, who also refused to allow the plaint to be amended by inserting a claim for the repayment of the earnest-money, on the ground that it would change the character of the suit from being one based on the contract of the 12th October, 1887, into a suit based on the fact that there had never been a contract at all between the parties. He dismissed the suit. The plaintiff appealed and contended that the contract was that the defendant should give an absolute title to the property, and that as he was unable to carry out this contract he should return the earnest-money to the plaintiff. *Held* (1) upon the evidence, *per* FARRAN, C. J., and FULTON, JARDINE and RANADE, JJ. (CANDY, J., *dissentiente*), that the knowledge that the property in question was held upon cantonment tenure was not brought home to the plaintiff, and that the Court could not impute such knowledge to him; that the terms of the contract itself were calculated to induce the plaintiff to believe that the defendant was selling not a mere revocable license to occupy the land, but the land itself. The defendant agreed to sell the land, and, having done so the onus lay upon him to show not only that he intended to sell only cantonment occupancy rights, but also that the plaintiff understood that he was purchasing the same. (2) That the defendant being in default, and being unable to give the title contracted for, should return the earnest-money to the plaintiff:—*Held* (by the Full Bench), that the amendment of the plaint so as to make it include a claim for the refund of the earnest-money ought to have been allowed, although not asked for until a late stage of the case. The right to specific performance of a contract, or, in the alternative, to a return of the earnest-money, should be determined in one and the same suit, and the plaintiff failing to obtain a decree for specific performance should not be driven to a separate suit to recover back his deposit, if he is entitled to relief in that form. The circumstance that a purchaser is not entitled to specific performance is by no means conclusive against his right to a return of the deposit. If, having regard to the terms of the contract, he is justified in refusing to accept the title, which the vendor is able to give, he is entitled to a refund of the deposit. IBRAHIMBHAI *v.* FLETCHER.

[21 Bom. 827

(9) PURCHASERS, RIGHTS OF.

13.—*Right to rescind sale — Concealment of defect in title—Transfer of Property Act (IV of 1882), s. 55—Meaning of words "material defect in property."*] The expression "material defect in property" in s. 55 of the Transfer of Property Act (IV of 1882), includes a defect in the title to an estate. Such a defect, if concealed by the vendor, gives the purchaser the right to rescind the sale. ESSA SULLEMAN *v.* DAYABHAI PARMANANDAS.

[20 Bom. 522

VENDOR AND PURCHASER—*concluded.*

(10) VENDORS, RIGHTS AND LIABILITIES OF.

14.—*Purchase-money, Suit by vendor to recover—Non-registration of bonds given for purchase-money of land.*] The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered, and were therefore not admissible in evidence:—*Held*, that the plaintiff, as vendor, was under no necessity to rely on the bonds in order to establish a charge on the property sold in respect of the unpaid purchase-money. Unpaid purchase-money is a charge on the property in the hands of the vendee, and the claim to enforce it falls under Art. 132, Sch. II of the Limitation Act. VIRCHAND LALCHAND *v.* KUMAJI.

[18 Bom. 48

VERDICT OF JURY.

Col.

1. General Cases ...1310
2. Power to Interfere with Verdicts ...1311

See ACQUITTAL.

[22 Calc. 377

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[21 Calc. 955

See CRIMINAL PROCEEDINGS.

[20 Mad. 445

(1) GENERAL CASES.

1.—*Special verdict—Priminal Procedure Code (1882), ss. 298 and 302—Duty of Sessions Judge.*] The accused was tried for rape. The jury, after considering their verdict, announced through their foreman that the accused "did the act with consent." The Sessions Judge thereupon, without requiring them to reconsider their verdict, or giving them any fresh directions, asked them whether they found the accused guilty or not guilty. The jury again retired and brought in a verdict of guilty, upon which the Sessions Judge sentenced the prisoner to three years, rigorous imprisonment:—*Held*, reversing the conviction and sentence, that the first verdict of the jury being a special verdict, and there being no real ambiguity about it, the Sessions Judge was bound under s. 302 of the Code of Criminal Procedure (Act X of 1882) to record the verdict and apply the law thereto:—*Held*, also, that the second verdict could not be sustained, as there was nothing to show that the Sessions Judge gave the jury any fresh directions, or explained to them that a finding that the woman had consented was tantamount to an acquittal. QUEEN-EMPRESS *v.* MADHAVRAO.

[19 Bom. 735

2.—*Special verdict—Murder—Culpable homicide—Grave and sudden provocation — Loss of self-control — Criminal Procedure Code (1882), s. 238.*] The accused was tried for murder. The first verdict of the jury was "guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return a simple verdict of guilty or not

VERDICT OF JURY—*continued.*

(1) GENERAL CASES—*concluded.*

guilty. The jury, therefore, brought in a second verdict of "not guilty.' The Judge, considering this verdict to be perverse, referred the case to the High Court under s. 307 of the Code of Criminal Procedure (Act X of 1882):—*Held*, that the direction given to the jury after the first verdict was wrong, as the case fell under s. 238 of the Criminal Procedure Code (Act X of 1882). Although the charge was only one of murder, the jury had a right to bring in a verdict of culpable homicide, if there was grave and sudden provocation so as to deprive the prisoner of the power of self-control:—*Held*, also, that the jury were not bound to find a simple verdict of guilty or not guilty. They might have found a special verdict, or findings on matters of fact to which the Judge applies the law:—*Held*, also, that the first verdict was a verdict of murder, as the jury did not find that the provocation had destroyed the power of self-control. It is not a necessary consequence of anger, or other emotion that the power of self-control should be lost. Except where unsoundness of mind or real fear of instant death is proved, the pressure of temptation is no excuse for breaking the law. QUEEN-EMPRESS *v.* DEVJI GOVINDJI.

[20 Bom. 215

(2) POWER TO INTERFERE WITH VERDICTS.

3.—*Criminal misappropriation—Charge of misappropriation of specific sums of money—Form of charge—Evidence of general deficiency—Criminal breach of trust—Penal Code, s.* 409—*Practice—New trial.*] The accused was charged with abetting the offence of criminal breach of trust committed by the Nazir of the Small Cause Court at Poona. The accused was a *karkun* in the Nazir's office, and it was his duty to keep the accounts of moneys received in the office from judgment-debtors, and of moneys paid out to decree-holders. He was charged with abetting the misappropriation of three sums, *viz.*, Rs. 20 on the 19th November, 1885, Rs. 45 on the 23rd November, 1885, and Rs. 10 on the 26th June, 1886. As to the first sum, it was alleged that an instalment of Rs. 25 due under a decree had been paid into the Nazir's office by a judgment-debtor on the 19th November, 1885, but the accused had entered in the office day-book only Rs. 5, thereby enabling the balance of Rs. 20 to be misappropriated. It appeared, however, that a sum of Rs. 25, being the instalment due to the decree-holder under the above decree, had been in due course paid out to him on the 4th December, 1885. As to the second sum of Rs. 45, it was alleged that a sum of Rs. 50 had been paid in, but only Rs. 5 had been entered by the accused, the balance being misappropriated. It appeared, however, in this case also that the full amount of the instalment, *viz.*, Rs. 50, had been duly paid out to the decree-holder a few days after its receipt. As to the third sum, it was alleged that the total receipts entered in the book on the 26th June, 1886, were Rs. 55, but the figure entered as the total was only Rs. 45, and that the balance of Rs. 10 had been misappropriated. The jury found the accused guilty on

VERDICT OF JURY—*continued.*

(2) POWER TO INTERFERE WITH VERDICTS—*continued.*

all three charges. On appeal by him, it was contended, that there was no evidence of the misappropriation of the specific sums in respect of which he was charged. There was evidence of a general deficiency; but there was no evidence that these specific sums formed part of that deficiency. On the contrary, the evidence showed that the instalments paid into the office had been duly paid out to the persons to whom they were payable:—*Held*, that the jury having had the facts brought to their notice, their verdict was final, and the High Court would not interfere with the verdict. The provisions of s. 167 of the Evidence Act (I of 1872) apply to criminal trials by jury. When part of the evidence, which has been allowed to go to the jury, is found to be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under s. 167 of the Indian Evidence Act (I of 1872), or to quash the verdict and order a retrial. The law, as settled in England by the *Queen* v. *Gibson*, L. R. 18 Q. B. D. 537, and as stated by the Privy Council in *Makin* v. *Attorney-General of New South Wales*, L. R. (1894) A. C. 57 (69,70), with reference to the granting of new trials where evidence has been improperly admitted, does not apply to India. *Wafadar Khan* v. *Queen-Empress*, I. L. R. 21 Calc. 955, not followed. QUEEN-EMPRESS *v.* RAMCHANDRA GOVIND HARSHE.

[19 Bom. 749

4.—*Special verdict—Murder — Culpable homicide—Grave and sudden provocation—Loss of self-control—Criminal Procedure Code* (1882), *s.* 307—*High Court's power of interfering with the verdict of a jury.*] The accused was tried for murder. The first verdict of the jury was "guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return a simple verdict of guilty or not guilty. The jury, therefore, brought in a second verdict of "not guilty." The Judge, considering this verdict to be perverse, referred the case to the High Court under s. 307 of the Code of Criminal Procedure (Act X of 1882):—*Held*, that the High Court will not interfere with the verdict of a jury unless it is shown to be clearly and manifestly wrong. A verdict ought to be considered a proper and not a perverse verdict if it is one which reasonable men might find on the facts in evidence. *Queen-Empress* v. *Dada Ana*, I. L. R. 15 Bom. 452; and *Queen-Empress* v. *Maganlal*, I. L. R. 14 Bom. 115, followed. QUEEN-EMPRESS *v.* DEVJI GOVINDJI.

[20 Bom. 215

5.—*Criminal Procedure Code* (1882), *ss.* 297 *and* 423, *cl.* (*d*) — *Misdirection to jury—Allowing verdict before accused is called on for defence.*] To allow the jury to pronounce their verdict before the accused is called upon to enter on his defence is a misdirection, though the Judge omits to charge the jury at all. In such a case, cl. (*d*) of s. 423 of the Criminal Procedure

VERDICT OF JURY—*concluded.*

(2) POWER TO INTERFERE WITH VERDICTS —*concluded.*

Code does not stand in the way of the Appellate Court's interfering with the verdict of the jury. QUEEN-EMPRESS *v.* IMAM ALI KHAN *alias* NATHU KHAN.

[23 Calc. 252

VESTING ORDER.

See INSOLVENCY—AFTER-ACQUIRED PROPERTY.

[17 Mad. 21
[18 Mad. 24
[19 Bom. 232

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[21 Bom. 205

——, Discharge of.

See INSOLVENT ACT, S. 7.

[20 Mad. 452

——, Effect of.

See INSOLVENT ACT, S. 7.

[19 Mad. 74
[21 Bom. 319

VILLAGE CHOWKIDARS ACT (BENGAL ACT VI OF 1870).

See CESS.

[22 Calc. 680

——S. 8.—*Order imposing fine by Sub-divisional Officer—Judicial order—Revision by the High Court—Magistrate, Jurisdiction of.*] Where the collecting member of a *panchayet*, constituted under the provisions of the Village Chowkidars Act (Bengal Act VI of 1870), was fined by the Sub-divisional Officer of Serampore under s. 8 of the Act for having disobeyed his orders and realised assessment from the villagers under the Act from the month of Baisakh, though the Act was not introduced into the sub-division till the month of Kartick following:—*Held*, the fine having been imposed by a Magistrate under the provisions of an Act of the Bengal Council, it was imposed in respect of an "offence" as defined by s. 4, cl. (*p*) of the Criminal Procedure Code, and by virtue of s. 4 of Bengal Act V of 1867, the provisions of ss. 63 to 70 of the Penal Code and s. 61 of the Criminal Procedure Code were applicable to the fine. The order of the Sub-divisional Officer was in its nature a judicial order, and was therefore subject to revision by the High Court. The order was bad because (1) there was no trial; (2) no act punishable with fine under s. 8 of the Act (Bengal Act VI of 1870) had been committed; and (3) because the District Magistrate only had the power to impose the fine. QUEEN-EMPRESS *v.* ASHWINI KUMAR GHOSE.

[23 Calc. 421

VILLAGE CHOWKIDARS ACT (BENGAL ACT VI OF 1870)—*concld.*

——, ss. 48 and 64.—*Chaukidari Chakran land, Settlement of—Power of Collector—Power of Commissioner to set aside Collector's order.*] Under s. 48 of Bengal Act VI of 1870, a Collector can only settle lands with the zemindar within whose estate the lands lie. Section 64 of that Act does not empower the Commissioner to set aside an order passed by the Collector under s. 48. BEJOY CHAND MAHATAB BAHADUR *v.* KRISTO MOHINI DASI.

[21 Calc. 626

VILLAGE MUNSIF.

See MUNSIF, JURISDICTION OF.

[20 Mad. 21

VILLAGE SUTAR (CARPENTER).

See HEREDITARY OFFICES ACT, S. 4.

[21 Bom. 733

VOLUNTARY PAYMENT.

See MONEY PAID FOR BENEFIT OF ANOTHER.

[21 Calc. 142
[L. R. 20 I. A. 160

—*Contract Act* (*IX of* 1872), *ss.* 69 *and* 70—*Money paid for benefit of another—Money paid to protect property from sale in execution of decree for arrears of rent.*] Certain immoveable property was inherited by *S*, the mother of the plaintiff, from her husband, and during her tenure of it she alienated it by deed of sale to the defendants. *S* died in April, 1890, and the estate then devolved upon the plaintiff, an only daughter (there being no male issue). In 1890, the property in possession of the defendants was, at the suit of a person who was the landlord, ordered to be sold together with other properties of the defendants for arrears of rent, due in the lifetime of *S*, and to prevent the sale the plaintiff paid the amount of the decree. In a suit for possession of the property and for a refund of the sum paid by the plaintiff to stop the sale, the defendants claimed an absolute interest in the property, but the Courts below found that the alienations by *S* to the defendants were not made for legal necessity and were therefore invalid:—*Held*, that the payment made by the plaintiff was not a voluntary payment, but was one which she was entitled to recover from the defendants. It being a question at the time whether the property belonged to the plaintiff or to the defendants, the payment to stop the sale was one in which the plaintiff was interested sufficiently to bring the case within s. 69 of the Contract Act. Section 70 was also applicable, as the payment relieved the defendants from liability to their landlord, and was made for the defendants, and not gratuitously, and the defendants enjoyed the benefit of such payment. The principles laid down in the cases of *Duli Chand* v. *Ramkishen Singh*, I. L. R. 7 Calc. 648; L. R. 8 I. A. 93; *Smith* v. *Dinonath Mookerjee*, I. L. R. 12 Calc. 213; and

VOLUNTARY PAYMENT—*concluded.*

Jugdeo Narain Singh v. *Raja Singh*, I. L. R. 15 Calc. 656, were held to govern this case. BAMA SUNDARI DASI *v.* ADHAR CHUNDER SARKAR.

[22 Calc. 28

VOLUNTARY TRANSFER.

See TRANSFER OF PROPERTY ACT, S. 53.

[22 Calc. 185

VOTERS, LIST OF.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[22 Calc. 717

WAGERING CONTRACTS.

See CONTRACT—WAGERING CONTRACTS.

[17 Mad. 480, 496
[18 Mad. 306

See EVIDENCE — PAROL EVIDENCE — VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[17 Mad. 480

WAIVER.

See ARBITRATION — AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

[21 Calc. 590
[L. R. 21 I. A. 47

See INSURANCE—LIFE INSURANCE.

[23 Calc. 320

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

[21 Bom. 351

See LANDLORD AND TENANT — EJECTMENT—NOTICE TO QUIT.

[18 Bom. 110

See LANDLORD AND TENANT — FORFEITURE—BREACH OF CONDITIONS.

[20 Bom. 439

See LIMITATION — QUESTION OF LIMITATION.

[19 Mad. 416

See LIMITATION ACT, ART. 75.

[20 Bom. 109

See LIMITATION ACT, ART. 179 — ORDER FOR PAYMENT AT SPECIFIED DATES.

[21 Calc. 542
[19 Mad. 162

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[18 Mad. 257

See WRITTEN STATEMENT.

[22 Calc. 268

WAIVER—*concluded.*

—*Suit by infant without a next friend—Objection not taken until case came on appeal when plaintiff had attained majority—Civil Procedure Code* (1882), *s.* 440.] Suit by the adoptive daughter of a temple dancing woman deceased, to compel the trustees of the temple to permit the performance of a certain ceremony, in view to her entering on the duties and emoluments attached to the office of her adoptive mother. The plaintiff was 17 years old at the time the suit was instituted, and she did not sue by a next friend. No objection was taken by the defendants, on the ground that the plaintiff could not sue without a next friend, until the case came before the Court of first appeal, at which time the plaintiff had attained majority:—*Held*, that seeing no objection was taken to the suit on the ground that the plaintiff should have sued by a next friend, until after she had attained her majority, the irregularity was waived. KAMALAKSHI *v.* RAMASAMI CHETTI.

[19 Mad. 127

WAJIB-UL-ARZ.

See CASES UNDER PRE-EMPTION.

See WASTE LANDS.

[19 All. 172

——, Testamentary bequest contained in.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[19 All. 16

WAKF.

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

WARRANT.

——, Arrest without.

See ESCAPE FROM CUSTODY.

[19 Mad. 310

——, Search without.

See ESCAPE FROM CUSTODY.

[19 Mad. 310

See OPIUM ACT, S. 9.

[24 Calc. 691

See PRIVATE DEFENCE, RIGHT OF.

[19 Mad. 349

——, Service of.

See PENAL CODE, S. 186.

[22 Calc. 596, 759

WARRANT OF ARREST.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[25 Calc. 20
[L. R. 24 I. A. 137

WARRANT OF ARREST—*continued.*

See MALICIOUS PROSECUTION.

[19 Bom. 485

See PENAL CODE, S. 332.

[18 All. 246

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES.

[17 All. 277

See WRONGFUL CONFINEMENT.

[19 Bom. 72

——, Execution of.

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[24 Calc. 320

——, Illegal issue of.

See PENAL CODE, S. 186.

[24 Calc. 320

—— not in legal form.

See PENAL CODE, S. 186.

[23 Calc. 896

See PENAL CODE, S. 332.

[18 All. 246

1.—*Warrant to arrest and imprison—Form of warrant — Service of warrant — Irregularity—Defect in warrant—Foreigners, Arrest of— Act III of 1864, s. 3—Criminal Procedure Code, s. 491.*] On the 3rd July, 1894, certain foreigners, resident in Bombay, having been arrested by the Police and sent to jail under warrant issued under ss. 3 and 4 of Act III of 1864, they applied to the High Court and obtained a rule *nisi* under s. 491 of the Criminal Procedure Code (Act X of 1882) and under Statute 31, Car. II, cap. 2 (Habeas Corpus Act), calling on the Superintendent of the Jail to show cause why they should not be set at liberty. A separate warrant was issued in the case of each of the foreigners in question; and all were in the same form. The warrant directed the person whose name appeared in it forthwith to "remove himself from British India by sea," and it further contained the following words:—"All officers to whom this order may be communicated are required to see that it is duly obeyed, and, in the event of its being infringed, to apprehend and detain the said ( ) in safe custody in the jail of Bombay under s. 4 of the said Act, until he shall be lawfully discharged therefrom." Each warrant was signed by the Secretary to Government and was directed to the Commissioner of Police and to the Superintendent of the Jail:—*Held*, that the warrants were not valid warrants for the following reasons:—(1) They were irregular in that they contained an order to the person named in them to do a certain thing with a further conditional order for his imprisonment in the event of his not doing it. There ought to have been a separate order to each prisoner to remove himself from British India, which order should have been duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there ought to have been a further order by the Governor in Council authorising his arrest and detention in jail. (2) The persons named in them were not indicated with sufficient certainty and particularity. The warrants contained no description of the persons against whom they purported to be directed and did not give their place of residence. (3) By reason of the direction contained in them that the persons named in them were to remove themselves from British India by sea to the places mentioned in the warrant. The particular route to be specified under s. 3 of Act III of 1864 is intended to be a route in British India, and not a route beyond the high seas. The Government has no jurisdiction to direct a person's movements at sea beyond the limits of three miles from the shore. (4) *Per* STARLING, J.—The warrants were also defective inasmuch as they bore no seal. ALTER CAUFMAN *v.* GOVERNMENT OF BOMBAY.

[18 Bom. 636

2.—*Warrants issued under Act XIII of 1859—Execution outside Jurisdiction—Criminal Procedure Code (1882), s. 83—Magistrate, Jurisdiction of—Breach of contract of service.*] Section 83 of the Criminal Procedure Code applies to warrants issued under s. 1 of Act XIII of 1859, and consequently such warrants may be executed outside the local jurisdiction of the Magistrates issuing them. QUEEN-EMPRESS *v.* KATTAYAN.

[20 Mad. 235

QUEEN-EMPRESS *v.* MUTHAYYA.

[20 Mad. 457

WARRANT CASE.

See PARDANASHIN WOMEN.

[21 Calc. 588

WASTE LANDS.

——, Grant of.

See MORTGAGE—FORM OF MORTGAGES.

[21 Calc. 882
[L. R. 21 I. A. 96

—— made cultivable.

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[24 Calc. 256

——, Right of village to pasturage on.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[21 Bom. 684

—Rights of zemindar in respect of waste lands—Provisions of wajib-ul-arz as to rights of pasturage.] *Held*, that a general provision contained in a *wajib-ul-arz* that village cattle might graze on the waste lands of the village could not be construed, in the absence of any definite covenant to that effect, as depriving the zemindar of his right to reclaim such waste lands. RAM SARAN SINGH *v.* BIRJU SINGH.

[19 All. 172

WATER.

——, Right to use of.

See EASEMENT.
[18 Mad. 320

See MADRAS FOREST ACT, s. 10.
[20 Mad. 279

——, Rights concerning.

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.
[20 Bom. 788

See RIGHT TO USE OF WATER.
[24 Calc. 865
[L. R. 24 I. A. 60

WATER-CESS.

See MADRAS IRRIGATION CESS ACT.
[19 Mad. 24

WATER-COURSE.

——, Obstruction of.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.
[18 Mad. 28

WELL, RIGHT TO USE.

See PRESCRIPTION — EASEMENTS — RIGHTS CONCERNING WATER.
[20 Mad. 389

WHARFAGE.

See INTERPLEADER SUIT.
[18 Bom. 231

WIDOW.

See DOMICILE.
[19 Bom. 697

See HINDU LAW—ADOPTION—EFFECT OF ADOPTION.
[22 Calc. 565
[21 Bom. 319

See HINDU LAW — ADOPTION — REQUISITES FOR ADOPTION—AUTHORITY.
[18 Mad. 53
[24 Calc. 589

See HINDU LAW—ALIENATION — ALIENATION BY WIDOW.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.
[17 Mad. 392
[22 Calc. 410
[20 Mad. 323

See CASES UNDER HINDU LAW—WIDOW.

See MAHOMEDAN LAW—INHERITANCE.
[19 All. 169

WIDOW—*concluded.*

See MAHOMEDAN LAW—WILL.
[25 Calc. 9
[L. R. 24 I. A. 196

See LIMITATION ACT, ART. 120.
[19 All. 169

——, Lien of.

See MAHOMEDAN LAW—DOWER.
[16 All. 225
[17 All. 77, 93

——, Power of.

See MAHOMEDAN LAW—MORTGAGE.
[20 Bom. 116

WIFE.

See HINDU LAW — MAINTENANCE — RIGHT TO MAINTENANCE—WIFE.
[19 Mad. 6

See HUSBAND AND WIFE.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.
[17 Mad. 260
[20 Mad. 470
[22 Calc. 291

See WITNESS—CIVIL CASES—PERSONS COMPETENT, OR OTHERWISE TO BE WITNESSES.
[18 Bom. 468

——, Removal of husband's property by.

See THEFT.
[17 Mad. 401

WILL.

Col.

1. Execution ... 1321
2. Attestation ... 1324
3. Form of Will ... 1324
4. Validity of Will ... 1325
5. Revocation ... 1325
6. Construction ... 1325

See HINDU LAW — JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY.
[20 Bom. 316
[21 Bom. 349

See CASES UNDER HINDU LAW—WILL.

See LIMITATION ACT, ART. 91.
[23 Calc. 1
[L. R. 22 I. A. 171

See CASES UNDER PROBATE.

See TRUST.
[18 Bom. 551

——, Construction of.

See COSTS—COSTS OUT OF ESTATE.
[21 Calc. 683

WILL—*continued.*

——, Execution of, Question of.

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[20 Bom. 238
[21 Bom. 335

See JURISDICTION — TESTAMENTARY JURISDICTION.

[20 Bom. 238
[21 Bom. 335

——of Mahomedan.

See RECEIVER.

[19 Bom. 83

——, Power to make.

See SALSETTE, LAW APPLICABLE IN.

[19 Bom. 680

——, Registration of.

See REGISTRATION ACT, S. 35.

[20 Mad. 254

——, Statement in.

See EVIDENCE ACT, S. 32.

[20 Bom. 562

See REGISTRATION ACT, S. 17.

[20 Bom. 562

——, Suit to establish title under.

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.

[19 Bom. 320

——, Validity of.

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE.

[18 Bom. 608

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[21 Bom. 563

(1) EXECUTION.

1.—*Probate and Administration Act (V of 1881), s. 50—Evidence as to the execution of a will by a person near death.*] On a question of fact, raised in 1887, whether an alleged testator had or had not been able to duly execute his will, as he was said to have done during his last illness, the judgment of the District Court in the affirmative was restored. The judgment of the High Court, which would have revoked the probate granted in 1882, was reversed, upon the consideration of conflicting evidence as to the mental capacity of the testator, and as to the genuineness of his signature. ROMESH CHUNDER MUKERJI *v.* RAJANI KANT MUKERJI.

[21 Calc. 1

2.—*Proof of due execution of will where the mental capacity of testator is in dispute—Rules for decision of such cases—Presumption—Duty of Appellate Court in deciding on evidence of witness.*]

WILL—*continued.*

(1) EXECUTION—*continued.*

In all cases in which the evidence is conflicting, it is the duty of a Court of Appeal to have great regard to the opinion formed by the Judge in whose presence the witnesses gave their evidence, as to the degree of credit to be given to it; and probably the advantage of hearing the witnesses give their evidence is of special value where there is conflict between them as to the mental capacity of a person whose conduct they have observed, and whose state of mind they depose to: for the original Court has not merely the better opportunity of judging of the truthfulness of the evidence from the manner in which it is given, but also of judging how far the witnesses possess those qualities on which depends much of the value of evidence given in good faith, *viz.*, power of observation, power of judgment, accuracy of expression, and general intelligence, which are of special importance in cases where the execution of a will is disputed on the ground that, at the time the will was alleged to have been made, the mental capacity of the testator was such that it was doubtful whether the will could have been "duly executed." "Due execution" of a will implies not only that the testator was in such a state of mind as to be able to authorise, and to know he was authorising, the execution of a document as his will, but also that he knew and approved of the contents of the instrument; and in such cases of disputed execution the Judge should consider and express an opinion upon both these questions. In ordinary cases execution of a will by a competent testator raises the presumption (sufficient, if nothing appears to the contrary, to establish) that he knew and approved of the contents of the will. Also under ordinary circumstances the competency of a testator will be presumed if nothing appears to rebut the ordinary presumption: ordinarily, therefore proof of execution of the will is enough. But where the mental capacity of the testator is challenged by evidence, which shows that it is, to say the least, very doubtful whether his state of mind was such that he could have "duly executed" the will as he is alleged to have done, the Court ought to find whether upon the evidence the testator was of sound disposing mind and did know and approve of the contents of the will. Where this had not been done, the Appellate Court after considering the whole evidence held, contrary to the decision of the lower Court, that the will was not proved and refused probate. WOOMESH CHUNDER BISWAS *v.* RASHMOHINI DASSI.

[21 Calc. 279

3.—*Proof of execution of will—Probabilities—Evidence.*] The fact of the execution of a will was disputed by a testator's relations. They impugned the will mainly on the theory of the improbability of its having been executed by him under the circumstances existing at the time, and in the presence of the witnesses alleged to have attested it. They admitted his intention to execute such a will, but contended that, having long deferred the execution, he had died without having effected it. To outweigh the strong and satisfactory evidence upon which the affirmative

WILL—*continued.*

(1) EXECUTION—*continued.*

of due execution rested, it would have been necessary that the improbabilities should have been cogent and clearly made out. But, in their Lordships' opinion, it was neither the one nor the other, and was based on an exaggerated view. The suggested inferences against the will were not borne out; and, on the other hand, the testimony in support of it was good. The judgment of the High Court, maintaining the will, was affirmed. CHOTEY NARAIN SINGH *v.* RATAN KOER.

[22 Calc. 519
[L. R. 22 I. A. 12

4.—*Suit by testator's son contesting validity of will—Alleged testamentary incapacity.*] Although the mental faculties of a person suffering from partial paralysis may have been affected by his physical weakness, he may still be capable of devising and of executing a will of a simple character, although unfit to originate or to comprehend all the details of a complicated settlement. In one sense the testator may not have been in the state which the witnesses described as "his full senses." He was feeble in body. The vigour of his mind was impaired, and his utterance was defective On the other hand, there was nothing in the evidence which could reasonably lead to the inference that he was incapable of understanding such business as fell to his lot, or of regulating the succession to his property. At the hearing of the suit, it was alleged that he was subject to insane delusions, as to which, however, the Courts below concurred in finding that they had not been shown to have existed. The statements made by him, alleged to have been the result of delusion, had not been shown to be altogether without foundation. As to this their Lordships' opinion was that, in order to constitute an insane delusion affecting the question of testamentary capacity, it should have been shown, not only that it was unfounded, but also that it was so destitute of foundation that no one, save an insane person, would have entertained it The judgment that this testator had not testamentary capacity appeared to them to have had the unsafe basis of speculative theory derived from medical books, and judicial *dicta* in other cases, and not to have been founded on the facts proved in this. SAJID ALI *v.* IBAD ALI.

[23 Calc. 1
[L. R. 22 I. A. 171

5.—*Incapacity from illness — Influence not amounting to coercive influence.*] A Khoja Mahomedan resident in Bombay, made his will in 1886, appointing his wife, and his eldest son by a former wife, to execute it. The testator died on the 9th February, 1891, having at different times, in the interval, made four codicils The widow applying for probate of all the above, propounded a fifth codicil, alleging it to have been made by her husband on the 6th February, 1891. The son petitioned for probate to be delivered to him and to the widow, but only of the will and of the first

WILL—*continued.*

(1) EXECUTION—*concluded.*

two codicils, contesting the three later codicils as having been made under undue influence exercised by the wife. He disputed the last codicil, not only on the ground of undue influence, if the codicil had been, in fact, executed, but because at the time of the alleged execution his father was almost unconscious, and unable to understand what he was doing. The High Court, in its original testamentary jurisdiction, refused probate of the three disputed codicils, granting probate of the will and of the first two codicils only. The Appellate High Court granted probate of the will and of the five codicils, finding that no undue influence had been exercised: and that the fifth had been executed by the testator with knowledge and comprehension of its contents, and of his free volition. The Judicial Committee affirmed the judgment of the Appellate Court as to the absence of undue influence. In their opinion, if there was not evidence, and there was not, to show coercion in the special matter of the codicils, general assertions of the wife's commanding character, and of the husband's weakness, and of their differences went for little. But, in regard to the fifth codicil, they affirmed the judgment of the original Court, finding the evidence to have left open the inference that the testator had been at the time when it was alleged by the widow that he had made this codicil, too exhausted and ill for such a testamentary act. SALA MAHOMED JAFFERBHAI *v.* JANBAI.

[22 Bom. 17
[L. R. 24 I. A. 148

(2) ATTESTATION.

6.—*Will not attested by two witnesses - Succession Act (X of 1865), s. 50—Hindu Wills Act (XXI of 1870), s. 2, cls. (a) and (b).*] The Hindu Wills Act (XXI of 1870), applies s. 50 of the Indian Succession Act (X of 1865) to those wills only that are mentioned in s. 2, cls. (*a*) and (*b*) of the former Act. A will which was not such a will as there mentioned was held to be valid though not attested by two witnesses. IN RE BAPUJI JAGANNATH.

[20 Bom. 674

(3) FORM OF WILL.

7.—*Imperfect form of will— Will unexecuted by testator—Blank spaces in body of will—Application for probate.*] A testator died leaving as his will a printed form of will imperfectly filled in, and having omitted to insert his name and description at the head of the document, and to append his signature thereto. He had, however, written his name in the attestation clause and completed the disposition clause bequeathing all his property to his wife and appointing her sole executrix:—*Held*, that this was sufficient, and the will should be admitted to probate. *In the Goods of Pasmore*, L. R. 1 P. & D. 653, referred to. IN THE GOODS OF PORTHOUSE.

[24 Calc. 784

WILL—*continued.*

(4) VALIDITY OF WILL.

8.—*Disposition of immoveable property in British India—Question of due execution and validity of will.*] The validity of a will which purports to dispose of immoveable property in British India must be tested by the rules applicable to the execution of wills in British India. BHAURAO DADAJIRAO *v.* LAKSHMIBAI.

[20 Bom. 607

(5) REVOCATION.

9.—*Revocation of portion of will—New page of will not duly executed substituted by testator after execution of will—Dependent relative revocation—Probate.*] After the death of the testator (H. G. Meakin) his will was found among his private papers in a sealed envelope with the words "H. G. Meakin's will, not to be opened until after death," written in his handwriting on the face of the envelope. The will was wholly in his writing, and was written on four separate sheets of paper pinned together. The first, third and fourth pages were of blue paper and of the same size, and each of them was signed at the bottom by the testator and by two witnesses. The fourth page stated the date of the will and was signed by the testator and was duly attested by the said two witnesses. The actual execution of the will took place (as was proved by evidence) in March or April, 1894. The second page, however, was of a different kind of paper from the other pages and of smaller size, and was signed by the testator but not by witnesses. This second page contained a bequest to a child who was born in May, 1894, *i.e.*, some months after the will was executed. The executors propounded the will:—*Held*, that probate must be refused. KER *v.* MEAKIN.

[20 Bom. 370

(6) CONSTRUCTION.

10.—*Devise of one kani out of an estate—Right of selection by the devisee.*] The owner of land, measuring one *kani* and three-quarters, died, leaving a will by which he devised one *kani* thereof to the plaintiff, who now sued to recover one *kani* selected by him out of the land in question:—*Held*, that plaintiff had the right to make his selection and was entitled to a decree. NARAYANASAMI GRAMANI *v.* PERIATHAMBI GRAMANI.

[18 Mad. 460

11.—*Appointment of executors by implication.*] Plaintiffs sued in 1894 to recover property belonging to the estate of a testator, claiming to be his executors under a will. The property was alleged to have been entrusted by the testator in 1893 to the defendant. The will contained no express appointment of executors, but it provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, and imposed upon them the duty of providing for the maintenance of persons therein named:—*Held*, that the plaintiffs were not appointed executors by implication. SESHAMMA *v.* CHENNAPPA.

[20 Mad. 467

WILL—*continued.*

(6) CONSTRUCTION—*continued.*

12.—*Joint tenancy-in-fee—Life estate—Intention of testator—Restricted enjoyment, Direction as to.*] A testator devised his estate, should his wife remain his widow, for the general benefit of his wife and her child then living, and any other children to be born to him of his said wife before or after his death. He also provided that should his wife remain his widow, she should have a full life-interest in the estate, and should not be annoyed with any vexation about shares during her lifetime, but that after her death her children and their descendants should take *per stirpes*; and in the event of his wife not remaining his widow and her child or children being living, then the estate should go for the general benefit of his children in equal shares when of the age allowed by law. And in the event of his said wife contracting a second marriage, and his children dying before marriage and without children and under age, his wife should take half of his estate and the testator's brother the other half, and in the event of the brother dying without children, the testator's wife should take the whole estate. The testator's wife remained his widow until her death, her children having all predeceased her without being married:—*Held*, that the intention of the testator by the first devise was to give an absolute estate to his wife and children jointly, and that the remaining clauses of the will were merely intended to restrict the mode in which they were to enjoy the gift. HALIBURTON *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[21 Calc. 488

13.—*Vested interest—Conditions repugnant—Condition restricting immediate enjoyment—Commission allowed to trustees, Calculation of.*] Where a testator who died in 1896 bequeathed the whole of his property, with the execution of an annuity to his wife of £250 per annum and some other specific legacies, to his only son, who had attained majority at the date of his father's death, but subject to the restriction that he should not be allowed to enjoy it until the end of the year 1900; and appointed two trustees to carry out his wishes:—*Held*, that the son took an immediate vested interest in the estate of the testator:—*Held*, also, that the condition restricting immediate enjoyment was a condition repugnant and was invalid. *Gosling* v. *Gosling*, Joh. 265; *Weatherall* v. *Thornburgh*, L. R. 8 Ch Div. 261, followed. Where commission is allowed to trustees annually, such commission should be calculated on the income of the estate and not on the *corpus*. LLOYD *v.* WEBB.

[24 Calc. 44

14.—*Gift of income for life with power to appoint—Power of appointment—Invalid power of appointment—Gift over in default of appointment—Gift of residue equally between two sons and then to next of kin.*] A Parsi by his will devised a certain house to his executors on trust after payment of repairs, &c., out of the income thereof to pay the balance of such income to his daughters,

WILL—*continued.*

(6) CONSTRUCTION—*continued.*

C and *J* in equal moieties, and after their death "to the use of such of the issue only of the said *C* and *J* as they should respectively appoint, such appointment to affect their own respective moiety only and not that of the other of them," and in default of appointment on trust to sell the house and divide the proceeds as directed in the will:—*Held*, that each daughter took half the house in question for her life with power to appoint it among her children as she thought fit. Even if the power to appoint had been invalid, the gift over on default should be upheld, on the authority of *Peacock* v. *Frigout*, L. R. (1893) 1 Ch. 54. A Parsi testator by his will bequeathed the residue of his moveable property to his executors in trust out of the income thereof to apply the sum of Rs. 50 for the maintenance of his son *B* until he should attain 21 years of age and to invest the surplus of such income in Government securities, which should be added to the original *corpus* of his moveable property for the benefit of his said son *B*, and upon his attaining the age of 21 to pay over to him "the whole of the interest, dividends and produce only of the *corpus* of the whole of the moveable property," and after the death of *B* in trust to divide the said *corpus* of the moveable property with all its additions and accumulations among the next of kin of the said *B*. By a codicil subsequently executed the testator directed that the above bequest should extend and be applicable to his son *N*, and that the executors should divide the income of the moveable property between *B* and *N* instead of giving the whole to *B*. The Court was of opinion that under the will and codicil, *B* and *N* were each to have a moiety of the income for their respective lives, and that on their death one moiety of the *corpus* was to go to their next of kin. The Court, however, declined to make a declaration to that effect, as *B*, who at the date of suit was unmarried, might afterwards marry and have children, who would not be bound by a declaration made in this suit. BYRAMJI JEHANGIR LAMNA *v.* RATNAGAR JAMSETJI RATNAGAR.

[18 Bom. 1

15.—*Gift of life interest or corpus—Discretion of executors to hand over corpus—Costs.*] *B*, a Portuguese inhabitant of Bombay, died in April, 1884, leaving three sons, *M*, *S*, and *J* (defendant No. 3), and two daughters, *B* and *C*. By her will she directed that her daughter *B* should enjoy the rents and profits of certain immoveable property for her life, and that after her death the said property should be sold, and the sale-proceeds (after payment of two legacies thereout) be divided equally between her two sons *S* and *J*. The seventh clause of the will was as follows:—"7. I further direct that the amount which may fall to the share of my son *J* under (*c*) of paragraph 6 above should be held in trust by my executors hereinafter named and converted by them into Government securities; the interest accruing therefrom should be paid for the maintenance of my said son *J*. Should my said son die leaving a widow or issue, his share shall be

WILL—*continued.*

(6) CONSTRUCTION—*continued.*

given to such widow or issue according as he may devise and bequeath. Should my said son *J* reform himself, and take off all his evil tendencies, and lead a steady, quiet and orderly life, or should he, on account of illness or other reasonable cause, be in urgent need of pecuniary assistance, I leave it to the discretion of my executors either to make over to my said son *J* for his absolute use the whole of the amount which he may be entitled to under (*c*) of paragraph sixth above or such part or parts thereof as to my executors may appear proper." *S* died in 1885, unmarried and intestate, leaving his two brothers, *M* and *J*, and his two sisters, *B* and *C*, him surviving. *M* died in 1889, leaving a widow and children. In 1891 *J* mortgaged all his interest under the said will to the plaintiffs to secure a loan of Rs. 6,100. In 1893 *B* died, and in 1894 *C* died. Subsequently the executors were proceeding to sell the property mentioned in the will when the plaintiffs filed this suit praying for a declaration that they had a valid charge upon *J's* interest therein, and that his interest should be ascertained and declared, and he himself ordered to pay the amount of their claim; that the property should be sold, and their claim paid out of the funds; that the executors should be restrained from selling, save subject to their (plaintiffs') rights, &c. The plaintiffs and *J* contended that he (*J*) in the events that had happened was entitled to the whole of the proceeds of the property absolutely, and that the gift in the sixth clause of the will could not be cut down by the provisions of the seventh clause:—*Held* (1) That the defendant *J* had no interest in the house mentioned in the will. He was only entitled to a share of the proceeds after it had been sold. (2) That his interest in his share of such proceeds was merely a life-interest, with power to appoint to his widow or issue, and that he was not entitled to be paid the *corpus* of such share, but that the executors might, under certain circumstances and at their discretion, hand over to him the said *corpus*. (3) That neither the plaintiffs nor *J* could interfere in the sale of the said property. (4) That the plaintiffs had a valid charge upon *J's* interest in the sale-proceeds of the said property to the extent of their mortgage. (5) That *J's* interest was (after deducting the legacies given by the sixth clause) an absolute interest in one-fourth share of *S's* moiety and a life-interest in his (*J's*) moiety, subject to the contingency of the executors in their discretion handing over the *corpus* of the share, or part thereof, for his absolute use, in which event the plaintiffs had the right to the same so far as their debt was unsatisfied. (6) As to costs, the plaintiffs and third defendant *J* should pay their own costs; that the executors and defendants Nos. 4 to 12 should have their costs paid out of *J's* share in *S's* moiety of the sale-proceeds, and, if that fund were not sufficient to pay such costs, the plaintiffs and the third defendant *J* to pay the deficiency. BECHAR AKHA *v.* DE CRUZ.

[19 Bom. 221

WILL—*concluded.*

(6) CONSTRUCTION—*concluded.*

Held in the same case on appeal, confirming the decree of the lower Court, that under the above clause of the will there was a clear gift to the wife or issue of *J*, but that *J* was to have the power of designating how they were to take. To that extent the absolute gift to *J* was qualified. Should the gift overfail, the absolute gift to *J* would remain unimpaired:—*Held* as to the costs (varying the decree of the Court below) that the executor's costs taxed as between attorney and client, be paid out of the estate as well as the costs of the defendants 4 to 12. Plaintiffs and *J* to bear their own costs respectively: plaintiffs to be at liberty to add their costs to their mortgage-security. In other respects the decree of the lower Court to be confirmed with costs other than the costs of defendants 4 to 12 whose costs may be added to their costs in the Court below. BECHAR AKHA *v.* DE CRUZ.

[19 Bom. 770

16.—*Bequest to executors and trustees in trust for son of testator and his widow—Life-interest—Estate in fee—Control and management of executors and trustees.*] A Hindu, by his will bequeathed certain property to his executors and trustees "upon trust for my son *T* and his heirs from the time of my death to allow him to occupy and use the same, and to enjoy the income thereof, and after the death of my son *T*, in trust to allow his widow to occupy and use the same and enjoy the income during her life; but if the said *T* shall die without leaving male issue him surviving, then in trust after the death of the survivor of them without leaving such male issue to my son *T* and his heirs according to the rules of Hindu law." The sons *T* and *P* both survived the testator, and *T* had a wife and three sons living at the date of suit. In a suit by the executors and trustees against *T* for construction of the will, *T* contended that, under the above clause, he was absolutely entitled to the property subject to the interest of his widow for her life. The plaintiffs contended that *T* had only a life-interest in the property;—*Held*, that the defendant *T* took only an interest for life in the property. The words "in trust for *T* and his heirs," which, standing alone, would give the property in fee, were to be read with the words immediately following, which showed a clear intention that *T* should only take a life-interest, to be followed by the same interest in his widow, after whom the heirs of *T* would take as purchasers:—*Held*, also, that the trustees were intended to take the legal estate and to have the control of the property, allowing *T* to enjoy the income of it. SMITH *v.* TRIBHOVANDAS MANGALDAS.

[19 Bom. 401

WITHDRAWAL OF APPEAL.

See APPEAL—OBJECTIONS BY RESPONDENT.

[17 All. 518

See PAUPER SUIT—APPEALS.

[18 Bom. 464

WITHDRAWAL OF APPLICATION.

—— for execution.

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[23 Calc. 817

—— for probate.

See PROBATE—APPLICATION FOR PROBATE.

[19 Mad. 458

—— to be declared insolvent.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[17 All. 156

WITHDRAWAL OF CRIMINAL PROCEEDINGS.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

[22 Calc. 898

WITHDRAWAL OF SUIT.

See MULTIFARIOUSNESS.

[16 All. 279

See RES JUDICATA — RELIEF NOT GRANTED.

[21 Calc. 265

——, Order allowing.

See APPEAL—DECREES.

[16 All. 19

[17 All. 97

——, Power to allow.

See SMALL CAUSE COURT, PRESIDENCY TOWNS — PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

[24 Calc. 129

1.—*Civil Procedure Code* (1882), *s.* 373—*Institution of fresh suit.*] Where *A* instituted a suit to establish his right to sell certain property in satisfaction of a decree against *B*, but withdrew the suit without having obtained leave to bring a fresh suit, and subsequently instituted another suit to establish his right to sell the same property in satisfaction of another decree against *B*:—*Held*, that the second suit was not barred by the provisions of s. 373 of the Code of Civil Procedure. KAMINI KANT ROY *v.* RAM NATH CHUCKERBUTTY.

[21 Calc. 265

2.—*Civil Procedure Code* (1882), *s.* 373—*Withdrawal of suit without permission to bring fresh suit—Application of s.* 373 *of the Civil Procedure Code to suits in Revenue Courts—Act X of* 1859.] Section 373 of the Civil Procedure Code (Act XIV of 1882) does not apply to suits before the Revenue authorities under Act X of 1859, that Act being a complete Code in itself. RADHA MADHUB SANTRA *v.* LUKHI NARAIN ROY CHOWDHRY.

[21 Calc. 428

MOKUNDA BULLAVKAR *v.* BHOGABAN CHUNDER DAS.

[21 Calc. 514

WITHDRAWAL OF SUIT—*concluded.*

3.—*Civil Procedure Code* (1882), *s.* 373—*Withdrawal of suit with permission to bring a fresh suit on the same cause of action—Civil Procedure Code, s.* 43.] Where a suit is withdrawn with permission under the first paragraph of s. 373 of the Code of Civil Procedure, the effect is to leave the parties in the same position as that in which they would have been if the suit had never been brought. A plaintiff, therefore, who has obtained an order under s. 373 of the Code, will not be debarred by s. 43 from claiming in a subsequent suit a relief which he might have included, but did not, in the suit which he was permitted to withdraw. *Venkata Chetti* v. *Ranga Nayak.* I. L. R. 10 Mad. 160, followed. BEHARI LAL PAL *v.* BARAN MAI DASI.

[17 All. 53

WITNESS.

Col.

1. Civil Cases ... 1332
   (*a*) Persons Competent or otherwise to be Witnesses ... 1332
   (*b*) Summoning and Attendance of Witnesses .. 1333
   (*c*) Defaulting Witnesses ... 1333
2. Criminal Cases 1333
   (*a*) Persons Competent or otherwise to be Witnesses ... 1333
   (*b*) Summoning Witnesses ... 1333
   (*c*) Examination of Witnesses ... 1334

See ACCOMPLICE.

[23 Calc. 361

See FALSE EVIDENCE—GENERALLY.

[19 Mad. 375

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[24 Calc. 499
[19 All. 302

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, WITNESSES, &C.

[21 Calc. 29

See REGISTRATION ACT, s. 74.

[24 Calc. 755

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[18 Bom. 581
[16 All. 80

——, Attestation by.

See STAMP ACT, S. 3, CL. 4.

[22 Calc. 757
[17 All. 211

—— called by accused.

See RIGHT OF REPLY.

[18 Bom. 364

—— compelling to answer.

See EVIDENCE ACT, S. 132.

[21 Calc. 392
[16 All. 88

WITNESS—*continued.*

——, Depositions of.

See CASES UNDER EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

——, Enforcing attendance of.

See PRACTICE—CIVIL CASES—COMMISSION.

[23 Calc. 404

——, Examination of.

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL.

[20 Mad. 388

See CRIMINAL PROCEEDINGS.

[20 Mad. 445

See EVIDENCE ACT, S. 132.

[21 Calc. 392

——, Examination of Magistrate as.

See TRANSFER OF CRIMINAL CASE.

[21 Calc. 920

——, Previous statements of.

See EVIDENCE — CRIMINAL CASES — DEPOSITIONS.

[23 Calc. 361

——, Privilege of.

See DEFAMATION.

[19 Bom. 51

See FALSE CHARGE.

[19 Bom. 51

——, Prosecution of pleader by.

See DEFAMATION.

[19 Bom. 340

——, Refusal to adjourn case in absence of.

See CRIMINAL PROCEEDINGS.

[19 Mad. 375

——, Refusal to summon.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[16 All. 218

——, Tender of document to, in cross-examination.

See RIGHT OF REPLY.

[16 All. 88

(1) CIVIL CASES.

(*a*) PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

1.—*Wife—Evidence of wife to prove non-access—Husband and wife—Presumption of legitimacy—Illegitimacy—Presumption of non-access—Evidence Act* (*I of* 1872), *ss.* 112 *and* 118.] A wife can be examined as to non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children. ROZARIO *v.* INGLES.

[18 Bom. 468

WITNESS—*continued.*

(1) CIVIL CASES—*concluded.*

(*a*) PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES—*concluded.*

2.—*Magistrate giving evidence before himself.*] Where a Judge is the sole judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. QUEEN-EMPRESS *v.* MANIKAM.

[19 Mad. 263

(*b*) SUMMONING AND ATTENDANCE OF WITNESSES.

3.—*Civil Procedure Code* (1882), *s.* 159—*Application to summon witnesses—Duty of Court in respect of such application.*] Where a person making an application to a Civil Court for witnesses to be summoned has negligently or with intention to delay the hearing postponed the making of his application for a summons until a time when it would be impossible to obtain the attendance of the witnesses at the hearing, the Court might properly refuse to adjourn the hearing, but nevertheless it would be the duty of the Court to order the summons asked for to issue, as the Court is not given a discretion under s. 159 of the Code of Civil Procedure, enabling it to refuse such an application. *Krishna Churn Baisack* v. *Protab Chunder Surma*, I. L. R. 7 Calc. 560; and *Bai Kali* v. *Alarakh Pirbhai*, I. L. R. 15 Bom. 86, approved. BHAGWAT DAS *v.* DEBI DIN.

[16 All. 218

(*c*) DEFAULTING WITNESSES.

4.—*Civil Procedure Code* (1882), *s.* 174—*Non-attendance of witness in obedience to a summons — Warrant of arrest — Non-payment of expenses in accordance with s.* 160, *Civil Procedure Code.*] There is no obligation on a Civil Court to issue a warrant for the arrest of a witness who, having been summoned, has failed to attend, when it is shown to the Court that the absence of such witness is due to the non-payment or non-tender, by the person at whose instance the summons had been issued, of the necessary expenses of such witness as specified in s. 160 of the Code of Civil Procedure. TODAR MAL *v.* SAID MUHAMMAD.

[17 All. 277

(2) CRIMINAL CASES.

(*a*) PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

5.—*Criminal Procedure Code* (1882), *s.* 488—*Order for maintenance—Person against whom order is sought.*] A person against whom an order for maintenance under s. 488 of the Code of Criminal Procedure is sought, is a competent witness on his own behalf in such proceedings. HIRA LAL *v.* SAHEB JAN.

[18 All. 107

(*b*) SUMMONING WITNESSES.

6.—*Criminal Procedure Code, ss.* 76, 81 *and* 160—*Investigation by Police—Power of Magistrate to issue warrant for arrest and production of witness—Penal Code, s.* 174.] Where a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the Police, and in attempting to execute such warrant the Police arrested the wrong person and were assaulted in the attempt:—*Held*, that apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a Police-officer, but only before his own Court under ss. 76 and 81 of the Code of Criminal Procedure:—*Held*, also, that as the investigation was held by a Police-officer under Chap. XIV of the Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under s. 160 of the Code of Criminal Procedure, and on failure by her to comply with such order, prosecute her under s. 174 of the Penal Code. QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE.

[24 Calc. 320

7.—*Right of accused to have witness summoned in his defence when he has refused to give in a list in the Magistrate's Court—Criminal Procedure Code* (1882), *s.* 211.] If an accused person, on being called upon under s 211 of the Code of Criminal Procedure to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such list, he cannot compel the Magistrate after committal to issue any summonses for witnesses on his behalf. Neither under such circumstances will the Sessions Judge be obliged to issue summonses for the attendance of such witnesses unless he is satisfied that their evidence may be material. *Queen-Empress* v. *Har Gobind Singh*, I. L. R. 14 All. 242, referred to. QUEEN-EMPRESS *v.* SHAKIR ALI.

[19 All. 502

(*c*) EXAMINATION OF WITNESSES.

8.—*Criminal Procedure Code* (1882), *ss.* 210 *and* 212—*Sessions case—Defence reserved—Power of Magistrate to examine witnesses named for the defence.*] The fact that an accused person committed to a Court of Session by a Magistrate has reserved his defence does not preclude the Magistrate from acting under s. 212 of the Code of Criminal Procedure, and examining any witnesses named by the accused as witnesses whom he intended to call in the Sessions Court. IN THE MATTER OF THE PETITION OF RUDRA SINGH.

[18 All. 380

9.—*Criminal Procedure Code* (1882), *ss.* 202 *and* 540—*Summons case.*] Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing pro-

WITNESS—*continued.*

(2) CRIMINAL CASES—*continued.*

(*c*) EXAMINATION OF WITNESSES—*continued.*

cess, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code:—*Held*, that the Magistrate was strictly within his rights under s. 540 of the Criminal Procedure Code in receiving fresh evidence after evidence on both sides had been taken, and the case adjourned for judgment, inasmuch as the case was still a pending case when such evidence was taken. IN THE MATTER OF ANANDA CHUNDER SINGH *v.* BASU MUDH.

[24 Calc. 167

10.—*Discretion of Public Prosecutor as to calling witnesses whose names are returned in the calendar—Practice.*] In a trial before a Court of Sessions or a High Court, it is entirely in the discretion of the Public Prosecutor conducting the case for the Crown to call or not to call any witness or witnesses whose names appear in the calendar as witnesses for the Crown. QUEEN-EMPRESS *v.* DURGA.

[16 All. 84

11.—*Cross-examination — Right of accused to cross-examine witnesses for the prosecution before commitment—Criminal Procedure Code* (1861), *s.* 194; (*X of* 1872), *s.* 191; (*X of* 1882), *ss.* 210, 256, 257 *and* 288.] An accused person has the right to cross-examine the witnesses for the prosecution after their examination at the judicial inquiry before the Magistrate previous to commitment. The fact that the Criminal Procedure Code of 1872 contained an express provision to that effect, which was omitted in the Code of 1882, together with the provision of ss. 210 and 256 of the latter Code, must not be taken to show an intention on the part of the Legislature to deprive an accused of that right. The express provision in the Code of 1872 was probably thought by the Legislature, when framing the Code of 1882, as being redundant, seeing that the Evidence Act of 1872, which was passed at the same time as the Criminal Procedure Code of 1872, made sufficient provision on the subject. Section 256, moreover, does not prohibit cross-examination before a charge is framed; it permits a further cross-examination expressly directed to the case found and embodied in the charge, and would enable an accused person, if he has reserved his cross-examination, to exercise his right at that time subject to a discretion given to the Magistrate by s. 257. Where depositions of witnesses for the prosecution before the Magistrate previous to commitment were taken without any cross-examination by the accused being allowed, it was held that such depositions were improperly treated as evidence in the Sessions Court, as they had not been "duly taken" in the presence of the accused within the meaning of s. 288 of the Code. QUEEN-EMPRESS *v.* SAGAL SAMBA SAJAO.

[21 Calc. 642

WITNESS—*concluded.*

(2) CRIMINAL CASES—*concluded.*

(*c*) EXAMINATION OF WITNESSES—*concluded.*

12.—*Cross-examination of witness called by the Court—Evidence Act* (*I of* 1872), *s.* 165—*Criminal Procedure Code* (1882), *s.* 540.]. Where in the course of a criminal proceeding a Magistrate himself summoned a witness and examined her under s. 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross-examine the witness:—*Held*, that the Magistrate was wrong in not allowing the complainant's attorney to cross-examine the witness when she was summoned:—*Held*, also, that there is nothing in s. 165 debarring or disqualifying a party to a proceeding from cross-examining any witness summoned by the Court. GOPAL LALL SEAL *v.* MANICK LALL SEAL.

[24 Calc. 288

13.—*Cross-examination—Right of co-accused to cross-examine witness called by another co-accused for defence where their cases are adverse—Evidence Act* (*I of* 1872), *s.* 137.] One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first. RAM CHAND CHATTERJEE *v.* HANIF SHEIKH.

[21 Calc. 401

WORKING FOR GAIN.

See JURISDICTION—CAUSES OF JURISDICTION — DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[18 Bom. 290, 294
[L. R. 21 I. A. 13

WRITTEN STATEMENT.

—Verification of written statement — Verification on behalf of Corporation—Principal officer of Corporation or Company—Civil Procedure Code (1882), *ss.* 115 *and* 435 *—Practice — Waiver of objection to verification—Plaint, Verification of.*] The Civil Procedure Code by ss. 115 and 435, enables a principal officer of a Corporation to verify a plaint or written statement, and it is therefore not necessary that permission for that purpose should be obtained, but it should be shown in cases to which s. 435 applies that the person purporting to verify a plaint or a written statement on behalf of a corporation or company is a principal officer of the corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to that effect, verification in the usual form would probably be sufficient. Where suits had been filed against the East Indian Railway Company, the plaints in which described the defendant company as a corporation, and an application was made for the admission on behalf of the defendant company of written statements signed "The East Indian Railway Company by their constituted Attorney and Agent Richard

WRITTEN STATEMENT—*concluded.*

Gardiner," who was described in the verification as the "Agent of the defendant company," and the written statements contained no statement to the effect that he was a principal officer of the defendant company and able to depose to the facts of the case:—*Held*, that such evidence should be supplied by affidavit before the written statements could be admitted. The provisions in the Code relating to the verification of written statement, however, being intended for the protection of plaintiffs, their observance might be waived by the plaintiffs, and if they were prepared to waive objections to the sufficiency of the verification, further evidence of the nature indicated might be dispensed with. SREENATH BANERJEE *v.* EAST INDIAN RAILWAY CO.

[22 Calc. 268

WRONG-DOERS.

See LIMITATION ACT, ART. 109.

[24 Calc. 413

WRONGFUL CONFINEMENT.

See COMPOUNDING OFFENCE.

[21 Calc. 103

—*Penal Code* (*Act XLV of* 1860), *s.* 342 — *Criminal Procedure Code* (1882), *s.* 54—*Offence committed by a British subject in foreign territory —Powers of the Police to arrest for such offence without a warrant— Wrongful arrest.*] Section 54 of the Criminal Procedure Code (Act X of 1882), does not empower a Police-officer to arrest, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India. *M* was a native Indian subject of the Queen-Empress, residing at Belgaum. A complaint was filed against him in the Sangli State, charging him with committing breach of trust within the territories of that State. Thereupon he obtained an order from the District Magistrate of Belgaum, dated the 15th November, 1891, which exempted him from arrest for the offence of criminal breach of trust without a warrant issued by himself or by the Political Agent of the Southern Maratha country. This order was communicated to *M* through the accused, who was the chief constable at Belgaum. On the 27th November, 1891, a Police-officer from Sangli State came to Belgaum with a warrant issued by the Sangli Court for the arrest of *M* on a charge of criminal breach of trust. The chief constable thereupon directed *M*'s arrest. *M* brought to the notice of the chief constable the District Magistrate's order of the 15th November, 1891, but he was detained in custody till the matter was reported to the first class Magistrate, who ordered his discharge. In the meantime the complaint filed against *M* in the Sangli State was dismissed without requiring his extradition. *M* thereupon prosecuted the chief constable on a charge of wrongful arrest and wrongful confinement:—*Held*, that the chief constable had no power to arrest the complainant

WRONGFUL CONFINEMENT—*concld.*

without a warrant, and that he was guilty of the offence of wrongful confinement under s. 342 of the Penal Code. IN RE MUKUND BABU VETHE.

[19 Bom. 72

WRONGFUL DISTRAINT.

See MADRAS RENT RECOVERY ACT, S. 78.

[20 Mad. 449

WRONGFUL EXECUTION.

See MALICIOUS PROSECUTION.

[19 Bom. 485

WRONGFUL GAIN.

See THEFT.

[18 All. 88
[22 Calc. 669, 1017

WRONGFUL LOSS.

See THEFT.

[22 Calc. 669, 1017
[18 All. 88

WRONGFUL RESTRAINT.

See COMPOUNDING OFFENCE.

[21 Calc. 103

—*Penal Code* (*Act XLV of* 1860), *ss.* 79 *and* 341—*Mistake of fact—Act done in good faith under belief it is justified by law.*] A Court peon accompanied by two of the decree-holder's men (petitioners) went to execute a warrant of arrest against the judgment-debtor *M*. A *palki* with closed doors was noticed to be coming out of the male apartment of *M*'s house. The petitioners, believing that *M* was effecting his escape in that *palki*, stopped it and examined it, although the persons accompanying the *palki* protested and said there was a lady in it. Admittedly, there was in the *palki* a *pardanashin* lady of rank:—*Held*, that having regard to the terms of s. 79 of the Penal Code, a conviction of the petitioners under s. 341 was not right. KANAI LAL GOWALA *v.* QUEEN-EMPRESS.

[24 Calc. 885

ZANZIBAR, CONSULAR COURT AT.

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 480

See JURISDICTION OF CRIMINAL COURT — GENERAL JURISDICTION.

[19 Bom. 741

ZANZIBAR ORDER IN COUNCIL, 1884.

See HIGH COURT, JURISDICTION OF — HIGH COURT, BOMBAY—CIVIL.

[20 Bom. 480

ZEMINDAR.

——, Liability of, for repairs of tank.

See CONTRACT ACT, s. 70.

[18 Mad. 88

——, Rights of

See WASTE LANDS.

[19 All. 172

ZURIPESHGI LEASE.

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[18 All. 123

See DECREE—FORM OF DECREE—POSSESSION.

[18 All. 440

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[24 Calc. 272
[L. R. 23 I. A. 158

APPENDIX.

ACCOUNT.

——, Right of defendant to an, in suit for.

See RES JUDICATA—MATTERS IN ISSUE.

[20 Mad. 418

——, Suit for.

See RES JUDICATA—MATTERS IN ISSUE.

[20 Mad. 418

ACT 1859—XIII.

See WARRANT OF ARREST.

[20 Mad. 457

ACT 1895—VI.

See DEKHAN AGRICULTURISTS RELIEF ACTS AMENDMENT ACT.

ADULTERY.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[20 Mad. 470

ADVERSE POSSESSION.

See LIMITATION ACT, ART. 141.

[20 Mad. 459, 493

See LIMITATION ACT, ART. 148.

[21 Bom. 793

AGREEMENT TO RENEW LEASE.

See REGISTRATION ACT, S. 17.

[20 Mad. 484

APPEAL.

——, Ex-parte.

See PRIVY COUNCIL, PRACTICE OF—COSTS.

[L. R. 24 I. A. 191

[25 Calc. 187

——, Presentation of.

See LIMITATION ACT, S. 4.

[20 Mad. 469

APPEAL—*continued.*

(5) CERTIFICATE OF ADMINISTRATION.

1.—*Succession Certificate Act (VII of 1889), ss. 9 and 10—Order for issue of certificate subject to security being given.*] On a contested application for a succession certificate under Act VII of 1889, an order was made for the issue of the certificate on security being furnished by the applicant. The opposite party preferred an appeal against the order:—*Held*, that the appeal was maintainable. ARIYA PILLAI *v.* THANGAMMAL.

[20 Mad. 442

(8) EXECUTION OF DECREE.

(*a*) QUESTIONS IN EXECUTION.

2.—*Civil Procedure Code* (1882), *s.* 244—*Question as to what had actually been subject of sale—Question between judgment-debtor and auction-purchaser.*] Land was sold in execution of a decree of a Subordinate Court, and a sale certificate was issued. A question having subsequently arisen as to what had actually been the subject of the sale, the auction-purchaser applied to the Court, and an order was made by which the sale certificate was amended. The judgment-debtor appealed to the District Court joining the decree-holder and the auction purchaser as respondents. The appeal was dismissed on the ground that no appeal lay:—*Held*, that the question was not one which could be determined under the Civil Procedure Code, s. 244, and consequently the decision of the Lower Appellate Court was right. MAMMOD *v.* LOCKE.

[20 Mad. 487

(*b*) PARTIES TO SUITS.

3.—*Civil Procedure Code* (1882), *s.* 244—*Representative of judgment-debtor—Agreement for satisfaction of judgment-debt.*] A money-decree was passed against a zemindar by the High Court in 1883, and it was transferred to the District Court for execution. The decree-holder attached and prepared to bring to sale certain villages of the judgment-debtor. These villages were included in a mortgage subsequently executed by the judgment-debtor in favour of third parties. Both before and after the mortgage the decree-holder received from the zemindar certain sums in consideration of his agreeing to postponements of

APPEAL—*concluded.*

(8) EXECUTION OF DECREE—*concluded.*

(*b*) PARTIES TO SUIT—*concluded.*

the sale; also it was agreed between them at a date subsequent to the mortgage that interest should be computed at a higher rate than that provided by the decree. Subsequently the decree-holder sought to bring the land to sale, and in computing the amount then due gave credit for none of the sums so received, and calculated interest at the enhanced rate. The mortgagee objected that the computation was erroneous in both these respects, and the District Judge upheld his objection. The judgment-debtor took no part in the contest:—*Held*, that the mortgagee was a representative of the judgment-debtor within the meaning of the Civil Procedure Code, s. 244, and that an appeal lay against the order of the District Judge. PARAMANANDA DAS *v.* MAHABEER DOSSJI.

[20 Mad. 378

(10) ORDERS.

4.—*Civil Procedure Code* (1882), *ss.* 243 *and* 588 *—Order refusing stay of execution pending suit between decree-holder and judgment-debtor.*] An appeal lies from an order refusing stay of execution under the Civil Procedure Code, s. 243, pending a suit between a decree-holder and his judgment-debtor. LINGUM KRISHNA BHUPATI DEVU *v.* KANDULA SIVARAMAYYA.

[20 Mad. 366

APPELLATE COURT.

——, Duty of.

See JUDGMENT—CIVIL CASES.

[20 Mad. 496

——, Power of.

See COURT-FEES ACT, S. 5.

[20 Mad. 398

(4) ERRORS AFFECTING OR NOT MERITS OF CASE.

—Misjoinder of parties and causes of action —Irregularity affecting merits—Civil Procedure Code (1882), *s.* 578.] In appeal it was contended by the respondents, in support of the decree made by the Court below dismissing the claim of the plaintiff No. 2, that the claim was liable to dismissal by reason of its involving the misjoinder of plaintiffs with different causes of action. This objection had been raised in the written statement, and the Court was asked to raise an issue on the point. In answer to this contention it was urged by the appellants that, as the respondents went to trial upon the merits, it was not open to them to urge any objection like this to the frame of the suit on appeal:—*Held*, that it was open to the respondents to raise the objection as to misjoinder in appeal. *Tarinee Churn Ghose* v. *Hunsman Jha*, 20 W. R. 240, distinguished; *Smurthwaite* v. *Hannay*, L. R. (1894), A. C. 494, referred to. MOHIMA CHANDRA ROY CHOWDHRY *v.* ATUL CHANDRA CHAKRAVARTI CHOWDHRY.

[24 Calc. 540

ARRESTS.

See JURISDICTION OF CRIMINAL COURT —GENERAL JURISDICTION.

[25 Calc. 20
[L. R. 24 I. A. 137

ATTACHMENT.

See LIS PENDENS.

[L. R. 24 I. A. 170
[25 Calc. 179

——, Priority of.

See INSOLVENT ACT, S. 7.

[20 Mad. 452

AWARD.

——, Suit to enforce.

See RIGHT OF SUIT—AWARDS.

[20 Mad. 490

BENAMI TRANSACTION.

See MADRAS REVENUE RECOVERY ACT, S. 38.

[20 Mad. 494

(2) CERTIFIED PURCHASERS.

1.—*Civil Procedure Code* (1882), *ss.* 317 *and* 244—*Purchase by a benamidar with funds belonging to a joint Hindu family—Right of member of family not being a party to benami transaction to sue for his share.*] A Hindu sued for partition of his share of the family property and obtained a decree which he partially executed. He then died without issue leaving a widow. The rest of the family remained undivided, and the plaintiff was born into it after the decree was passed. Some of the members of the family arranged for the purchase of the late decree-holder's property with their money *benami* for them and for a similar purchase of other portions of the family property at Court-sales held a further execution of the decree. The plaintiff now sued for partition of *inter alia*, those portions of the family property which had been the subject of the *benami* transaction:—*Held*, that the plaintiff was entitled to share therein and was not precluded from asserting his right by the Civil Procedure Code, s. 244, or s. 317. MINAKSHI AMMAL *v.* KALIANARAMA RAYER.

[20 Mad. 349

2.—*Civil Procedure Code* (1882), *s.* 317—*Sale in execution of decree—Right to prove purchase benami.*] Certain property was mortgaged in 1881 and again in 1882. In 1883 the interest of one of the mortgagors in the property was brought to sale subject to the mortgages in execution of a decree against him, and was purchased by the assignor of defendant No. 6. In 1884 a decree for sale was obtained on the mortgage of 1882, neither defendant No. 6 nor his assignor having been brought on to the record. In execution of that decree the property now in question was

BENAMI TRANSACTION—*concluded.*

(2) CERTIFIED PURCHASERS—*concluded.*

purchased by the predecessor in title of the plaintiff who now brought this suit for redemption, averring that the purchase of 1883 was *benami* for the mortgagors:—*Held*, that the plaintiff was not debarred by the Civil Procedure Code, s. 317, from proving this averment. KOLLANTAVIDA MANIKOTH ONAKKAN *v.* TIRUVALIL KALANDAN ALIYAMMA.

[20 Mad. 362

BENGAL TENANCY ACT (VIII OF 1885).

——, s. 61.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT, &C.

[25 Calc. 1

[L. R. 24 I. A. 164

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——, s. 12.

See RES JUDICATA—MATTERS IN ISSUE.

[20 Mad. 418

——, s. 27.

See PLAINT—AMENDMENT OF PLAINT.

[20 Mad. 467

——, ss. 32, 45 and 46.

See DISMISSAL OF SUIT.

[20 Mad. 360

——, s. 53.

See PLAINT—AMENDMENT OF PLAINT.

[20 Mad. 467

——, s. 243.

See APPEAL—ORDERS.

[20 Mad. 366

——, s. 244.

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[20 Mad. 487

See BENAMI TRANSACTION — CERTIFIED PURCHASERS.

[20 Mad. 349

——, s. 252.

See REPRESENTATIVE OF DECEASED PERSON.

[20 Mad. 446

1.—s. 257A.—*Adjustment of decree out of Court—Agreement not certified to Court—Res judicata—Suit to enforce agreement or for damages for breach of it.*] A decree for partition of family property was passed in favour of two plaintiffs. One of the plaintiffs having died

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

before execution, a question arose between the survivor and one of the defendants as to the devolution of his interest, and the decision was in favour of the surviving plaintiff. The contending parties made an arrangement, according to which some of the land representing the share of the deceased plaintiff should be given to the defendant. This agreement was not certified to the Court, and the decree was executed at the instance of the surviving plaintiff who subsequently refused to give effect to the arrangement. The then defendant now sued in the alternative for possession of the land awarded to him or for damages:—*Held* (1) that the plaintiff's claim for the land was not maintainable; (2) that the claim for damages for breach of the agreement was maintainable. KRISHNASAMI AYYANGAR *v.* RANGA AYYANGAR.

[20 Mad. 369

2.—s. 257 (A).—*Agreement for satisfaction of judgment-debt.*] A money-decree was passed against a zemindar by the High Court in 1883, and it was transferred to the District Court for execution. The decree-holder attached and prepared to bring to sale certain villages of the judgment-debtor. These villages were included in a mortgage subsequently executed by the judgment-debtor in favour of third parties. Both before and after the mortgage the decree-holder received from the zemindar certain sums in consideration of his agreeing to postponements of the sale; also it was agreed between them at a date subsequent to the mortgage that interest should be computed at a higher rate than that provided by the decree. Subsequently the decree-holder sought to bring the land to sale and in computing the amount then due gave credit for none of the sums so received and calculated interest at the enhanced rate. The mortgagee objected that the computation was erroneous in both these respects, and the District Judge upheld his objection. The judgment-debtor took no part in the contest:—*Held*, that the District Court not being the Court which passed the decree had no power to sanction the agreements under s. 257 (*a*), and that the decision was right. PARAMANANDA DAS *v.* MAHABEER DOSSJI.

[20 Mad. 378

——, s. 525.

See RIGHT OF SUIT—AWARDS.

[20 Mad. 490

——, s. 574.

See JUDGMENT—CIVIL CASES.

[20 Mad. 496

——, s. 583.

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—GENERALLY.

[20 Mad. 448

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concluded.*

——, s. 588.

See LETTERS PATENT, HIGH COURT, CL. 15.

[20 Mad. 407

COMPLAINT.

(2) DISMISSAL OF COMPLAINT.

(*b*) POWER OF, AND PRELIMINARIES TO, DISMISSAL.

1.—*Criminal Procedure Code* (1882), *s.* 203—. *Duty of Magistrate to examine witnesses for the complaint before dismissing complaint.*] When a case has not been disposed of under the Criminal Procedure Code, s. 203, and the complainant's witnesses have been summoned, the Magistrate is bound to examine the witnesses tendered by the complainant, and is not entitled to acquit the accused on a consideration of the complainant's statement alone. QUEEN-EMPRESS *v.* SINNAI GOUNDAN.

[20 Mad. 388

COMPLAINT—*concluded.*

(2) DISMISSAL OF COMPLAINT—*concluded.*

(*b*) POWER OF, AND PRELIMINARIES TO, DISMISSAL—*concluded.*

(3) POWER TO REFER TO SUBORDINATE OFFICERS.

2.—*Criminal Procedure Code* (1882), *s.* 202—*Reference of cases by Magistrate to the Police for inquiry.*] A Magistrate can send a case for inquiry by the Police under the Criminal Procedure Code, s. 202, only when for reasons stated by him he distrusts the truth of the complaint. In cases where the accused is a member of the Police force, it is generally better that the inquiry should be prosecuted by a Magistrate. QUEEN-EMPRESS *v.* KANAPPA PILLAI.

[20 Mad. 387

April 1898.

THACKER, SPINK & CO.'S
LAW PUBLICATIONS.

Second Edition. Just Published. 8vo, *cloth.* *Rs.* 7-8.

THE

LAW RELATING TO NEGOTIABLE INSTRUMENTS

IN BRITISH INDIA.

BEING THE

SECOND EDITION

OF

CHALMERS' NEGOTIABLE INSTRUMENTS ACT.

By ARTHUR CASPERSZ,

Barrister-at-Law, Advocate of the High Court, Calcutta.

PRESS NOTICES OF THE FIRST EDITION.

"From a perusal of the Introduction and of the notes given to each section a clear idea of the scope and meaning of the Act is obtained, and what in the bare text was very involved becomes intelligible. Mr. Chalmers' book will therefore be most useful to all those who either deal in Negotiable Instruments in the course of their business, or who have to give legal opinions on, or conduct cases arising out of, the rights and liabilities founded on such instruments."—*Pioneer.*

"But it is when we come to the strictly critical portions of the Commentary that we find it of great use and sterling value to the practitioner for every-day reference."—*Times of India.*

Second Edition. Now Ready. —*Demy* 8vo, *cloth.* *Rs.* 12

THE

LAW OF SPECIFIC RELIEF IN INDIA:

BEING A COMMENTARY ON ACT I OF 1877.

By CHARLES COLLETT,

LATE OF THE MADRAS CIVIL SERVICE; OF LINCOLN'S INN, BARRISTER-AT-LAW AND FORMERLY A JUDGE OF THE HIGH COURT, MADRAS.

Second Edition.

By H. N. MORISON,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; AUTHOR OF "ADVOCACY AND EXAMINATION OF WITNESSES."

Now Ready. Demy 8vo, pp. cxxxix 1092. *Cloth, gilt. Rs.* 18.

THE LAW OF EVIDENCE

APPLICABLE TO BRITISH INDIA.

BY HON'BLE JUSTICE AMEER ALI, M.A., C.I.E.,

Barrister-at-Law, Judge of the High Court of Judicature at Fort William in Bengal

AND

J. G. WOODROFFE, M.A., B.C.L.,

Barrister-at-Law, Advocate of the High Court at Calcutta.

[*SCHEME—(1) Introduction to Part of Act (2) Introduction to Chapter of Act* (a) *Section of Act;* (b) *Principle upon which it is enacted;* (c) *Group of Cognate Sections;* (d) *References to Text-books dealing with the subject-matter of the Section;* (e) *Commentary on the words of the Section.*]

CONTENTS :—Table of Acts, Regulations, and Statutes Cited — Table of Cases Cited — Bibliography of Works upon the Law of Evidence — General Introduction—The Indian Evidence Act with commentary—pp. 1—915 Schedule—Appendix—(A) Table of Places to which the Act has been specifically or generally applied : of Native States which have adopted the Act ; and of places beyond British India to which the Act has been made applicable—(B) Note on the interpretation of Statutes — (C) Act II of 1855 (Evidence) — (D) Fifth Report of Her Majesty's Law Commissioners (1868) — (E) Abstract of Proceedings of the Legislative Council (1868—72)— General Index.

In the preparation of this commentary upon the Indian Evidence Act (I of 1872), the authors have availed themselves, not only of the latest editions of English and American text-books treating generally of the Law of Evidence, but also of some of those special treatises which deal in detail with its particular branches, such as the theory of Relevancy ; circumstantial, opinion, and presumptive evidence ; the law relating to confessions, experts, estoppel, identification, disputed handwriting, *res judicata*, privileged communications, burden of proof, extrinsic evidence affecting documents, the right to begin and reply, the examination of witnesses, communication by telegraph and telephone, and the like. With respect to the Indian case-law especial endeavour has been made not only to *collect* all relevant decisions from the days of the earliest Indian Reports down to and including the month of December 1897, but also to afford that *classification* and critical *analysis* of those decisions, without which a text-book is likely to prove to be hardly more than a repository for the names of cases or the Reporter's head notes, and as such but of little service to the practising lawyer for whom this work has been, in large part, designed.

Super-royal 8vo, cloth, gilt.

A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS AND PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1890-93,

WITH AN INDEX OF CASES.

COMPILED BY

JOSEPH VERE WOODMAN,

Of the Middle Temple, Barrister-at-Law, and Advocate of the High Court, Calcutta.

Vol. VI.	1887—1889	...	... Rs. 12 0
Vol. VII.	1890—1893	...	... „ 16 0
Vol. VIII.	1894—1897	...	... „ 16 0

Fourth Edition. In Royal 8vo, cloth. Rs. 10.

THE

INDIAN LIMITATION ACT,

ACT XV OF 1877

(*as amended by Act XVII of* 1877, *XII of* 1879, *V of* 1881, *IX of* 1887, *VII of* 1888, *XII of* 1891, *and VI of* 1892.

WITH NOTES

BY

H. T. RIVAZ,

Of the Inner Temple, Barrister-at-Law, and one of the Judges of the Chief Court, Punjab.

TAGORE LAW LECTURES, 1894.

In Royal 8vo, cloth. Rs. 10.

THE LAW OF

FRAUD, MISREPRESENTATION & MISTAKE

IN BRITISH INDIA.

BY SIR FREDERICK POLLOCK, BART.,

Barrister-at-Law, Professor of Jurisprudence, Oxford.

Second Edition. Royal 8vo, cloth. Rs. 16.

MAHOMEDAN LAW. Vol. I.

THE LAW RELATING TO

GIFTS, WAKFS, WILLS, PRE-EMPTION AND BAILMENT,

ACCORDING TO

THE HANAFI, MALIKI, SHAFIC, AND SHIAH SCHOOLS.

COMPILED FROM

Authorities in the Original Arabic, with Explanatory Notes and References to Decided Cases, and an Introduction on Mahomedan Jurisprudence and Works on Law.

BY THE HON'BLE JUSTICE AMEER ALI, M.A., C.I.E.,

Barrister-at-Law, Author of "The Personal Law of the Mahomedans."

Importance of Mahomedan Law.
The Law relating to Gifts.
Formalities relative to Gifts.
The Revocation of Gifts.
Consideration on *Ewaz*.
The Shiah Law relating to Gifts.
The Law of Gifts according to the Shafic Doctrines.
The Law of *Wakf*.
The *Moukoof Alaihim* or the Objects of *Wakf*.
The Matwalli.
The Powers of the Wakif.
Wakf in favour of non-existing Objects.
The Principles of Construction.
The Shiah Law relating to *Wakf*.
The Maliki Law relating to *Wakf*.
The Law of *Wakf* according to Shafic School.
The Law relating to Wills.

"The authorities relating to gifts of Mushaa have been collected and commented upon with great ability by Syed Ameer Ali in his Tagore Lectures of 1884."—*Privy Council, Indian Appeals*, Vol. XVI.

Royal 8vo, cloth. Rs. 14.

MAHOMEDAN LAW. Vol. II.

A Second Edition of

THE PERSONAL LAW OF THE MAHOMEDANS.

The Law relating to Succession and Status, according to the Hanafî, Mâlikî, Shâfeï, Shiah and Mutazala Schools. Compiled from Authorities in the original Arabic, with Explanatory Notes and References to Decided Cases, and an Introduction on the Islâmic system of Law.

BY THE HON'BLE JUSTICE AMEER ALI, M.A.,

Barrister-at-Law, One of the Judges of H. M.'s High Court of Judicature, Bengal.

Second Edition, Revised and Enlarged. Royal 8vo, cloth. Rs. 16.

THE

LAW RELATING TO MINORS

AS ADMINISTERED IN THE PROVINCES SUBJECT TO THE HIGH COURTS OF WARDS IN BENGAL, MADRAS, AND THE NORTH-WESTERN PROVINCES.

BY ERNEST JOHN TREVELYAN, ESQ.,

Barrister-at-Law.

CONTENTS.

I.—Age of Majority and Domicile.
II.—Contracts and Disposal of Property.
III.—Acquisition of Property by Transfer, Gift, Inheritance, or Will.
IV.—Offices of Public and Private Trust.
V.—Testimony of Minors.
VI.—Wrongs and Criminal Offences by Minors.
VII.—Wrongs and Criminal Offences against Minors.
VIII.—Natural Right of Guardianship.
IX.—Appointment of Testamentary Guardians.
X.—Loss of Right of Guardianship.
XI.—Appointment of Guardians by Civil Courts.
XII.—Removal and Discharge of Guardians by Civil Court.
XIII.—References, Appeals, Costs, &c., in Proceedings under Guardian and Wards Act.
XIV.—Appointment and Removal of Guardians by High Courts.
XV.—Duties of Guardians.
XVI.—Rights and Powers of Guardian of Person.
XVII & XVIII.—Rights and Powers of Guardian of Property.
XIX.—Liabilities of Guardians.
XX.—Modes of enforcing Rights to Custody of Property and Person of Minor.
XXI.—Ratification and Avoidance.
XXII.—Maintenance, Advancement, and Education.
XXIII.—Marriage of Minors.
XXIV.—Powers of Courts over Property of Minors.
XXV.—Suits and Proceedings by and against Minors.
XXVI.—Costs of Suits by and against Minors.
XXVII.—Decrees in Suits by and against Minors.
XXVIII.—Limitation of Suits by and against Minors.
XXIX.—Proof of Minority when in Issue.
XXX.—Courts of Wards.
XXXI.—The Court of Wards in Bengal, Constitution and Powers.
XXXII.—Bengal Court of Wards, Managers and Guardians.
XXXIII.—Bengal Court of Wards, Miscellaneous.
XXXIV.—Court of Wards, North-Western Provinces.
XXXV.—Court of Wards, Madras.
XXXVI.—Suits by and against Wards of Courts of Wards.

Second Edition. Royal Octavo. Cloth. Rs. 12.

ESTOPPEL

BY

REPRESENTATION AND RES JUDICATA

IN

BRITISH INDIA.

BY ARTHUR CASPERSZ, ESQ., B.A., *Barrister-at-Law.*

CONTENTS:—INTRODUCTION—LEADING PRINCIPLES.

PART I.—MODERN OR EQUITABLE ESTOPPEL.

CHAPTER 1—Estoppel by Representation. CHAPTER 2—Benami Transactions. CHAPTER 3—Landlord and Tenant. CHAPTER 4—Patents. CHAPTER 5—Bailor and Bailee. CHAPTER 6—Vendor and Purchaser. CHAPTER 7—Agency and Partnership. CHAPTER 8—Negotiable Instruments. CHAPTER 9—Companies. CHAPTER 10—Matter in Writing. CHAPTER 11—Admissions.

PART II.—ESTOPPEL BY JUDGMENT.

CHAPTER 1—Res Judicata. CHAPTER 2—Forum. CHAPTER 3—Parties and Representatives. CHAPTER 4—Matters in Issue. CHAPTER 5—Matters constructively in Issue. CHAPTER 6—Final Decision. CHAPTER 7—Judgments in Rem. CHAPTER 8—Foreign Judgments.

(PRESS NOTICES OF THIS EDITION.)

"The present edition has been duly brought up to date, and our opinion as to the general merit and utility of the book is confirmed by further examination."—*Law Quarterly Review.*

"Mr. Caspersz has laid the legal profession under an obligation by the publication of a new edition of his excellent book on Estoppel . . . . . The work is a monument of industry and affords a striking example of what may be accomplished by a busy man."—*Indian Daily News.*

"The most authoritative Indian treatise upon the subject with which it deals. Mr. Caspersz's name is a guarantee for accurate and conscientious work, and his book may be accepted among the classics of an Indian law library."—*Statesman.*

(PRESS NOTICES OF THE FIRST EDITION.)

"The treatise ranges over the entire subject, including those portions of the Law of Estoppel not yet dealt with in the codified Chapters of the Indian Law. A great body of decisions had grown up in India prior to the so-called Codes, and the stream of cases still flows on. It must therefore be an advantage to the Indian Law student and practitioner to meet with a treatise presenting the English and Indian cases set out with great fulness and accuracy and discussed with care.....

"The work appears to have been executed with great care and ability, and it is, we think, likely to commend itself to students and to the profession generally both in England and in India."—*Law Quarterly Review.*

"The best and most recent exposition of a branch of law which of late years has very considerably expanded."—*English Law Times.*

"The author has dealt with the subject exhaustively and accurately, and we predict that this book will speedily become a text-book in British India in the hands of every legal practitioner in the country."—*Indian Jurist.*

"A work shewing great research, and one in which the materials amassed have been arranged and presented to the reader with great care and skill"—*Times of India.*

"We have hope that it may prove as successful and worthy of success as the best of its predecessors."—*Madras Mail.*

Second Edition. Just Published. Royal 8vo, cloth. Rs. 16.

TESTAMENTARY SUCCESSION

AND

ADMINISTRATION OF INTESTATE ESTATES IN INDIA,

BEING A COMMENTARY ON THE

Indian Succession Act (X of 1865), The Hindu Wills Act (XXI of 1870), The Probate and Administration Act (V of 1881), &c., &c.

BY

GILBERT S. HENDERSON, M.A.

WITH

Notes and Cross References, and a General Index.

PRESS NOTICE.

"This edition supplies a distinct need and will be welcomed by the legal profession ..... Perhaps the most significant testimony to its value and to the esteem in which it is held in the Law Courts is the fact that no rival had seriously disputed this field with Mr. Henderson whose name is a guarantee for sound work and learning."—*Statesman.*

TAGORE LAW LECTURES, 1887.

Royal 8vo, cloth. Rs. 16.

THE LAW OF

TESTAMENTARY DEVISE

AS ADMINISTERED IN INDIA; OR, THE LAW RELATING TO

WILLS IN INDIA.

With an Appendix containing—The Indian Succession Act (X of 1865), The Hindu Wills Act (XXI of 1870), The Probate and Administration Act (V of 1881), with all Amendments, The Probate and Administration Act (VI of 1889), and The Certificate Succession Act (VII of 1889).

BY G. S. HENDERSON, ESQ., M.A.,

Barrister-at-Law.

Just Ready. Royal 8vo., pp.

THE

INDIAN PENAL CODE

With a complete Commentary, to which is appended the Acts of the Governor-General in Council relating to Criminal Offences in India.

BY W. F. AGNEW,

Barrister-at-Law, Recorder of Rangoon.

In Crown 8vo, cloth. Rs. 7.

THE CASE-NOTED PENAL CODE.

BY CHARLTON SWINHOE,

Barrister-at-Law.

The aim of this work is to give under each section the references to the cases decided under it; with, in many cases, a résumé of the arguments and decisions.

"Admirably adapted for use in Court work and especially in the Mofussil .....his book should commend itself to lawyers engaged in criminal practice. It should also prove useful to Magistrates who may have occasion to consider whether authorities cited before them are conclusive or not, for it will give them all the cases decided upon any particular point under consideration."—*Times of India.*

"We are glad to say that, so far as we are able to judge, he has performed his task with much success.....The book is printed in a convenient size, and the Case-Law appears to have been carefully consulted."—*Civil and Military Gazette.*

Third Edition, with Additions to 1896. *Crown 8vo.*

Cloth, Re. 1-8; Paper, Re. 1.

A CHAUKIDARI MANUAL:

BEING

ACT VI, B.C., OF 1870,

AS AMENDED BY

ACTS I, B.C., OF 1871, 1886, & 1892,

Sec. 45, Code of Criminal Procedure, and S. 21, Regulation XX of 1817

WITH

NOTES, RULES, GOVERNMENT ORDERS, AND INSPECTION NOTES.

BY G. TOYNBEE, ESQ.,

Magistrate of Hooghly.

ANGLO-MUHAMMADAN LAW.

Demy 8vo, cloth, pp. 151. *Rs.* 6.

AN INTRODUCTION TO THE STUDY

OF

ANGLO-MUHAMMADAN LAW

BY SIR ROLAND KNYVET WILSON, BART.,

Late Reader in Indian Law to the University of Cambridge.

"This little work aims at lightening the task of the student who is entering upon a study of this difficult and complex subject. Commencing with a sketch of Mahomet as a legislator, and the Koran as a law-book, it proceeds to trace the development of Muhammadan Law, both orthodox and otherwise, and its growth in India under Muhammadan rulers. The last two chapters are taken up with the history and present footing of Anglo-Muhammadan Law, and an outline thereof. The author's long experience, when he was reader of Indian Law at Cambridge, has enabled him to meet the wants of the student."—*Law Times.*

"We think that the author has acted wisely by distinguishing by the prefix 'Anglo,' that small fragment of the Muhammadan Law which the English Government enforces by its own tribunals. Very thoroughly has the author dealt with this fragment, and to those who desire to make some acquaintance with this branch of Indian Jurisprudence, we recommend the above book with every confidence."—*Law Magazine and Review.*

"The book is well and carefully written, showing a good grasp of facts and theories and a wide and judicious reading of authorities on the subject,—as might well have been expected from the late accomplished Reader of Indian Law in Cambridge University."—*Asiatic Quarterly Review.*

Demy 8vo, cloth, pp. 495. *Rs.* 15.

A DIGEST OF

ANGLO-MUHAMMADAN LAW.

BY SIR ROLAND KNYVET WILSON, BART.,

Late Reader in Indian Law to the University of Cambridge.

Setting forth in the form of a Code, with full references to modern and ancient authorities, the special Rules now applicable to Muhammadans as such by the Civil Court of British India.

"Sir Roland has admirably performed his difficult task. His Digest sets forth for the first time in a complete manner the laws now applicable to Mahomedans as such by the Indian Courts, together with full references to ancient and modern authorities, and to the ruling decisions of the Judges... ....as a work of technical codification it also takes a high place. It is by no means the first service of the kind which Sir Roland Wilson has rendered to India; but even if it stood alone he would have achieved a work not unworthy of his own reputation or of the great University in which he so long and so ably represented Indian Law."—*The Times.*

"The volume is an interesting one even for the general reader, while the lawyer should be able to get up Anglo-Muhammadan Law from the 'Digest' with the least possible trouble."—*Madras Times.*

"This work will be a welcome addition to the somewhat scanty stock of modern English writing upon this branch of Indian Law.....Finally, no pains have been spared to make the rules and decisions visible at a glance. The Index is copious, and the whole work well and clearly printed."—*Times of India.*

"Sir Roland Wilson grapples with a complicated task in what seems to us a most admirable and efficient manner. His statements of the law and of precedents are wholly lucid and intelligible, and this Digest should form an invaluable work of reference for all who are called upon to deal in any way with the Muhammadan Law of British India."—*Home News.*

Royal 8vo, cloth. Rs. 16.

THE INDIAN PENAL CODE:

WITH A COMMENTARY.

By W. R. HAMILTON,

Barrister-at-Law, Presidency Magistrate, Bombay.

PRESS NOTICES.

"A valuable work."—*Bombay Gazette.*

"The book will repay study by English readers—as showing the simplicity and feasibility of the Code."—*Law Journal.*

"It is one more valuable contribution to the slowly increasing series of standard commentaries on statute law by authors who have had practical experience in the administration of the law in India."—*Times of India.*

"Of the book itself we have a high opinion. It contains, in fact, practically everything of importance that can guide to a knowledge or administration of the Penal Code; while notes on procedure appended to each section that defines an offence, stating briefly whether the offence be cognizable, bailable, compoundable, and so on, enable the reader to gain at a glance all the information he requires."—*Statesman.*

Third Edition. Royal 8vo. Rs. 14.

THE CODE OF CRIMINAL PROCEDURE

ACT X OF 1882,

Together with Rulings, Circular Orders, Notifications, etc., of all the High Courts in India; and Notifications and Orders of the Government of India and the Local Governments.

EDITED WITH COPIOUS NOTES AND FULL INDEX.

Third Edition.

By GILBERT S. HENDERSON.

In the Press.

THE

BENGAL TENANCY ACT,

AS AMENDED BY

B. C. ACT I of 1898,

WITH

NOTES, ANNOTATIONS, RULES, ORDERS, NOTIFICATIONS, &c.

By R. F. RAMPINI,

One of the Judges of the High Court, Calcutta.

In the Press. Third Edition, Re-written and Enlarged.

THE

LAW OF MORTGAGE IN INDIA.

With an Appendix. The Transfer of Property Act annotated.

BY RASH BEHARI GHOSE, M.A., D.L.

Tagore Lecturer, 1875.

Royal 8vo, cloth. Rs. 12.

THE

LAW AND PRACTICE

OF

REGISTRATION IN BENGAL.

COMPRISING

A short History of the Legislation on this Branch of the Law from the year 1793 to the present time, with Acts XVI of 1864, XX of 1866 and VIII of 1871: also Act III of 1877 as amended up to date, with Notes, Annotations and Judicial Decisions.

The Sections of the Tenancy Act, which affect Registration, with Notes, and the latest Revised Rules of the Bengal Government.

The General Stamp Act with a Digest of Rulings and latest Rules and Notifications of Government.

A Manual of Rules which have the force of Law and of all Circular Orders of the Department, Annotated with Appendices and Specimen Forms, and

A List of Districts and Sub-Districts corrected up to April 30, 1895.

BY H. HOLMWOOD, I.C.S.,

District and Sessions Judge, Gaya, Late Inspector-General of Registration, Bengal.

PRESS NOTICES.

"This excellent handbook of digested information on the Law and Practice of Registration in Bengal. . . . . Between its covers the reader will find, printed in clear type and admirably arranged, all the Stamp Law, Procedure Rules, and Judicial Decisions necessary to the due registration of title-deeds and securities. . . . . It fills a void and has a distinct value of its own. . . . . Few large offices, we venture to think, can afford to be without a copy of this careful and unpretentious work."—*Statesman.*

"Mr. Holmwood must be congratulated on his contribution to our Indian Law Manuals. He has certainly succeeded in producing a handy volume of the Law upon the subject, which we can recommend with all confidence to those whose duties or whose avocations bring them in contact with the Registration Act."—*Englishman.*

TAGORE LAW LECTURES, 1878.

Second Edition, Revised. Royal 8vo. Rs. 10.

THE HINDU LAW OF
MARRIAGE AND STRIDHANA.

BY THE HON'BLE GURUDASS BANERJEE, M.A., D.L.,

Judge, High Court, Calcutta.

CONTENTS.

I.—Introductory Remarks.
II.—Parties to Marriage.
III.—Forms of Marriage and Formalities requisite for a valid Marriage.
IV.—Legal consequences of Marriage.
V.—Dissolution of Marriage—Widowhood.
VI.—Certain Customary and Statutory Forms of Marriage.
VII.—What constitutes Stridhana.
VIII.—Rights of a Woman over her Stridhana.
IX.—Succession to Stridhana, according to the Benares School.
X.—Succession to Stridhana, according to the Maharashtra Dravida, and Mithila Schools.
XI.—Succession to Stridhana, according to the Bengal School.
XII.—Succession to Woman's Property other than her Stridhana.

TAGORE LAW LECTURES, 1880.

Royal 8vo, cloth. Rs. 16.

THE PRINCIPLES OF THE
HINDU LAW OF INHERITANCE,

TOGETHER WITH

I.—A Description, and an Inquiry into the Origin of the SRADDHA Ceremonies:
II.—An Account of the Historical Development of the Law of Succession, from the Vedic Period to the present time:
III.—A Digest of the Text-Law and Case-Law, bearing on the Subject of Inheritance.

BY RAJKUMAR SARVADHIKARI, B.L.,

Law Lecturer and Professor of Sanskrit, Canning College, Lucknow.

TAGORE LAW LECTURES, 1879.

Royal 8vo, cloth. Rs. 10.

THE LAW RELATING TO
THE HINDU WIDOW.

BY BABOO TRAILOKYANATH MITRA, M.A., D.L.,

Law Lecturer, Presidency College.

I.—The Sources of Hindu Law.
II.—The Condition of Women and the Obligation of Widows.
III.—The Widow's Rights of Succession.
IV.—The Obligations of the Widow as Heir.
V.—The Re-marriage of Widows.
VI.—The Nature and Extent of the Widow's Estate.
VII.—The Nature and Extent of the Widow's Estate (continued).
VIII.—The Alienations by the Widow.
IX.—The Alienations by the Widow (continued).
X.—The Rights of the Reversioners.
XI.—Suits by Reversioners.
XII.—The Maintenance of the Widow.

Crown 8vo, cloth. Rs. 6.

ADVOCACY & EXAMINATION OF WITNESSES,

Including the Duties and Liabilities of Pleaders in India.

BY H. N. MORISON, ESQ.,

Barrister-at-Law and Advocate of the High Court, Calcutta.

The work treats of matters of practice such as taking instructions, speech, argument, examination-in-chief and cross-examination, and includes a résumé of the duties and liabilities of Pleaders in India. The Legal Practitioners' Act, with the Rules of the High Courts relating to the admission of Pleaders and Mukhtears, appears in the form of an Appendix.

"Undoubtedly juniors and, possibly, not a few seniors too, may profit by the sensible and practical hints Mr. Morison gives as to the *finesse* of Counsel and the treatment of Witnesses . . . . . Mr. Morison's book is certainly one that should be bought."—*Statesman.*

"A work which will be of material service to the younger members of the legal profession in India."—*Indian Daily News.*

"A book which should be put into the hands of every young pleader before starting practice. It deals in a popular manner with the whole of an Advocate's duty from the moment of presenting himself to the ordeal of the examination until he reaches the topmost rung of the ladder . . . . . The book contains many hints that will be of value to all practitioners."—*Bombay Gazette.*

"We can safely predict of Mr. Morison's book that no one who buys it will regret the small sum expended on its purchase."—*Civil and Military Gazette.*

"The chapter on 'Witnesses' is extremely good."—*Pioneer.*

"A very useful little book . . . . The book is something more than a guide to the bar and contains useful hints on Advocacy and the Examination of Witnesses."—*Ceylon Observer.*

"An interesting and valuable addition to the literature of the profession. The subject is treated in a broad and comprehensive manner which makes the book attractive to the general reader, while at the same time the author brings judgment and experience to bear upon the every-day details of an Advocate's life, and with admirable results . . . . . enough has been said to indicate the highly practical and valuable character of the work, which may safely be commended to the attention alike of the lay public and of all Indian Lawyers."—*Englishman.*

Fourth Edition, Revised. Demy 8vo, cloth. Rs. 5.

THE

INDIAN LAW EXAMINATION MANUAL.

BY FENDALL CURRIE, ESQ.,

Of Lincoln's Inn, Barrister-at-Law.

CONTENTS.

Introduction—Hindoo Law—Mahomedan Law—Indian Penal Code—Code of Criminal Procedure—Code of Civil Procedure—The Specific Relief Act—Evidence Act—Limitation Act—Succession Act—Contract Act—Registration Act—Stamp and Court Fees' Acts—Mortgage—The Easement Act—The Trust Act—The Transfer of Property Act—The Negotiable Instruments' Act.

OPINIONS OF THE PRESS.

"The experience of the compiler in the learned profession with which he is connected, speaks for the usefulness and importance of the questions that have been put in with a view to prepare candidates for the examination."—*Indian Mirror.*

"It is excellently arranged."—*Englishman.*

In Demy 8vo, cloth. Rs. 10.

THE N.-W. PROVINCES RENT ACT;

Being Act XII of 1881,

As amended by subsequent Acts.

With Introduction, Commentary and Appendices.

By H. F. HOUSE, C.S.

"He has produced a tolerably complete handbook of the law relating to agricultural and like tenancies in the North-Western Provinces. But he has done more. In his excellent Introduction he has given a very interesting historical retrospect of the Rent Law. The notes under the several sections of the Act appear also to embody all the important rulings and to have been put together with great care. On the whole, the handbook is one we can thoroughly recommend to all those who are interested in the branch of law with which it deals."—*Civil and Military Gazette.*

Demy 8vo, cloth. Rs. 7.

THE

NORTH-WESTERN PROVINCES RENT ACT:

BEING

ACT XII OF 1881, AS AMENDED BY ACT XIV OF 1886.

WITH NOTES, &c.

By H. W. REYNOLDS, C.S.

Demy 8vo, cloth. Rs. 8.

THE NORTH-WESTERN PROVINCES LAND REVENUE ACT:

Being Act XIX of 1873, *as amended by Acts I and VIII of* 1879, *XII of* 1881, *XIII and XIV of* 1882, *XX of* 1890, *and XII of* 1891.

WITH NOTES, GOVERNMENT ORDERS, BOARD CIRCULARS AND DECISIONS, AND RULINGS OF THE ALLAHABAD HIGH COURT.

By AZIZUDDIN AHMED,

Deputy Collector and Magistrate, N.-W. Provinces and Oudh.

Third Edition, Revised, Re-written, and much Enlarged.

THE

LAW OF RENT AND REVENUE OF BENGAL:

Being the Bengal Tenancy Act, Putni Laws and other Revenue Acts, with Notes, Annotations, Judicial Rulings and Rules of the Local Government, High Court, and the Board of Revenue.

By Baboo KEDAR NATH ROY.

Crown 8vo, cloth, gilt. Rs. 12.

HAND-BOOK OF INDIAN LAW,

A Popular and Concise Statement of the Law

WITH FULL INDEX.

By a Barrister-at-Law and Advocate of the High Court, Calcutta.

PRESS NOTICES.

"This handbook is intended primarily to present to the non-legal public and to students an abridgment of the law, criminal and civil, generally in force throughout British India. It is concise, popularly written, and so far as we have been able to form an opinion on the point, complete. Lawyers as well as students may find it serviceable at a pinch. A short and excellent historical account of legislation and Courts of Law in British India from the time of the East India Company until the present day is embodied in an Introduction. The Index is admirable. This book will be of great use to competition-wallahs."—*The Law Journal, December* 22*nd*, 1894.

" . . . . . should command a very ready sale. The object of the author, we are told, has been to present, in as concise and popular form as the nature of the subject admits, an abridgment of the law, criminal and civil, generally in force throughout British India. . . . . One admirable feature of the book is the general arrangement for reference, which makes the discovery of any required subject both simple and easy. The work of condensing has been well done, and no important point appears to have been omitted; while at the foot of each page the latest and best authorities on each point are quoted."—*The Englishman.*

"Will be useful to both these classes (non-legal public and students). . . The book will be useful to the legal public as well as to the classes for whose benefit it is primarily intended, for to lawyers it will serve the purpose of a convenient index or legal lexicon."—*Indian Daily News.*

"Intended primarily for the use of laymen and students, this book will, we doubt not, very soon become as recognised an authority here as 'Every Man his own Lawyer' is at home . . . . . he (the Editor) has well succeeded in the object he has had in view—the presentment in a concise and popular form of an abridgment of the Criminal and Civil Law generally in force throughout British India. . . . . The book is so thoroughly 'up to date' that the Land Acquisition Act passed last March is summarised therein. The Editor has admirably succeeded in his endeavour to give a lucid and accurate compendium of the laws under which we live. The exhaustive index at the end of the book and the bold type used at the commencement of paragraphs and for words of particular importance will materially facilitate reference . . . . So handy a compendium of Indian judiciary should have a very large sale."—*Bombay Gazette.*

"Will satisfy a prevailing want and ought to meet with a ready sale . . . . . carefully condensed work . . . . the work will, we may safely say, be able to point out to the uninitiated what, if he has a grievance, is the proper course he ought to pursue; and how, if he wishes to repair a wrong or redress an injury, he must set about it, and what is his remedy and the best course to pursue. The work would seem to be exhaustive, compendious, and, unlike the general run of legal productions, of small bulk, condensed and convenient to handle, and possesses a large and copious index of 92 double columns of fairly small print; without it a work of such a kind might run the risk of becoming a trackless waste; but with it, it is at once handy and easily understood of the people . . . . . is enterprising in character, and we trust it will meet with the success which it deserves, and may every purchaser of a copy remember that '*Ignorantia juris haud excusat.*'"—*The Pioneer.*

HANDBOOKS FOR GOVERNMENT EXAMINATIONS.

Third Edition, Revised. Crown 8vo, cloth. Rs. 3.

THE STUDENT'S HANDBOOK OF

MAHOMEDAN LAW.

BY THE HON'BLE JUSTICE AMEER ALI, C.I.E.,

Author of "Mahomedan Law:" "The Spirit of Islam:" The Ethics of Islam," &c., &c.

Demy 8vo, cloth, pp. 517. Rs. 6.

A SHORT TREATISE

ON

HINDU LAW

AS ADMINISTERED IN THE COURTS OF BRITISH INDIA.

BY HERBERT COWELL,

Middle Temple, Barrister-at-Law,

Author of "The History and Constitution of the Courts and Legislative Authorities in India."

"We can say of this Book that it appears to be clearly and readably written, and to cover in outline a very wide extent of subject-matter."—*Law Journal.*

"Will be found to contain a well digested mass of information."—*Imperial and Asiatic Quarterly.*

"Puts the outlines of Hindu Law briefly and clearly before the student."—*Madras Times.*

Crown 8vo, cloth, Rs. 3; Post-free, Rs. 3-3.

INTRODUCTION

TO THE

REGULATIONS OF THE BENGAL CODE.

BY C. D. FIELD, M.A., LL.D.

CONTENTS.

CHAPTER I.—The Acquisition of Territorial Sovereignty by the English in the Presidency of Bengal.
" II.—The Tenure of Land in the Bengal Presidency.
" III.—The Administration of Land-revenue.
" IV.—The Administration of Justice.

A Reprint in Crown 8vo, cloth. Rs. 3.

THE

PRINCIPLES OF JUDICIAL EVIDENCE;

An Introduction to the Indian Evidence Act, 1872.

BY SIR JAMES FITZ-JAMES STEPHEN.

Fifth Edition. Thick 8vo, cloth. Rs. 18.

THE

LAW OF EVIDENCE IN BRITISH INDIA.

By C. D. FIELD, M.A., LL.D.,

Bengal Civil Service,

Recently a Judge of the High Court of Judicature, Calcutta.

This work contains the Indian Evidence Act (as amended up to 1st January 1894), the Bankers' Evidence Act, XVIII of 1891 (as amended by Act I of 1893), and all provisions on the subject of Evidence which are in force and unrepealed by the Evidence Act or any other Act.

OPINIONS OF THE PRESS ON THIS EDITION.

"One of the standard reference books of India is Field's Law of Evidence..... We may say of the present volume, as was said of its predecessor, that it is rather a new book than a new edition. To the Editor the revision has been, if not exactly a labour of love, at least a corollary of his own private study of the latest changes of the law. An important and most useful feature of this edition is a complete list of the Native States or 'places therein' to which the Evidence Act has been applied by the Governor-General. No such list, we believe, has been compiled or published before. The entire work, we may say, bears the unmistakable traces of careful and critical revision. Every change that has been introduced is a very decided improvement."—*Englishman.*

"The work has been brought up to date with a painstaking thoroughness which will be obvious to all who compare it with the fourth edition, and will be generally welcomed by judicial officers and the legal profession throughout India as the most complete and authoritative exposition obtainable of the subject with which it deals."—*Indian Daily News.*

"Mr. Field's name is a sufficient guarantee for the completeness and accuracy of any legal work he undertakes, and his present venture will no doubt meet with due appreciation in the profession."—*Statesman.*

"Mr. Field's 'Law of Evidence in British India' has long been recognised as the leading authority on the subject. His book is to the Indian practitioner what Taylor's work is to the English lawyer, and no law library can be deemed complete without it .... In concluding this brief notice of his excellent treatise, which, as we have said above, contains a masterly exposition of the Law of Evidence applicable to this country, an historical retrospect of the course of legislation on that subject, and valuable hints on estimating the value of Indian evidence, we can best sum up our opinion of it in the words of the talented author of *Leading Cases done into English*:—

"'All this and more
Is printed in a wise and weighty book,
With gloss and commentary, case on case,
Rich soil for fresh debate and argument
To swell the garden of choice instances,
And bless posterity with new delicacies
Of hair-breadth's difference.'"

—*Civil and Military Gazette.*

Second Edition. Thick Demy 8vo. Rs. 16.

A COMMENTARY ON HINDU LAW

OF

INHERITANCE, SUCCESSION, PARTITION, ADOPTION, MARRIAGE, STRIDHAN, ENDOWMENTS AND TESTAMENTARY DISPOSITION.

BY

PUNDIT JOGENDRO NATH BHATTACHARJI, M.A., D.L.

"No Student or Practitioner should be without a copy of this great work."—*Nanabhai Haridas.*

"Babu Bhattacharji is the greatest name in the recent history of the University. He has already made his mark, having written a really original work on Hindu Law, which must assert itself against the crude compilations and false views of European writers."—*Reis and Rayyat, Decr. 26th,* 1885.

"The result of his labours is an accurate, well-arranged, comprehensive, and convenient manual of Hindu Law eminently fitted to be a text-book for students, and a guide to practitioners in all cases where questions of principle are involved. Upon several important topics the book is rich in original information and observations; and we may notice particularly the Rules of Interpretations, the Legal Maxims, and the Theory of Spiritual Benefits, as remarkable for originality. . . . . The most valuable feature of the book is, that it gives us an insight into the real nature of Hindu Law, the manner in which its rules are expressed, and in which its principles must be discovered, and the methods by which its problems must be solved."—*Indian Nation.*

Second Edition, Revised, with Additions. Crown 8vo, cloth. Rs. 4-8.

AL SIRAJIYYAH:

OR THE

MAHOMEDAN LAW OF INHERITANCE,

WITH NOTES AND APPENDIX.

By ALMARIC RUMSEY, *Barrister-at-Law,*

Professor of Indian Jurisprudence at King's College, London, Author of "The Mahomedan Law of Inheritance," etc.

Three Volumes. Imperial 8vo, cloth. Rs. 36.

DIGEST OF INDIAN LAW REPORTS,

A COMPENDIUM OF THE RULINGS OF THE HIGH COURT OF CALCUTTA AND OF THE PRIVY COUNCIL, 1831 TO JUNE 1896.

By D. SUTHERLAND, Esq.,

Barrister-at-Law, Middle Temple.

Vol. I, 1831 to 1876, Rs. 8. Vol. II, 1876 to 1890, Rs. 12.
Vol. III, 1891-96. Rs. 16.

The only Digest which shows on the face of each ruling where it has been followed, approved, over-ruled, dissented from, explained, or referred to; and affords facilities, by means of cross-references, to speedily getting at a particular case.

PRIVY COUNCIL JUDGMENTS.

From 1831 to 1880.

JUDGMENTS OF THE PRIVY COUNCIL
ON APPEALS FROM INDIA.

By D. SUTHERLAND, Esq.

The set of 3 vols. half-calf, Rs. 27-8.

Fourth Edition. Now Ready. Royal 8vo, cloth. Rs. 10.

RULINGS OF THE PRIVY COUNCIL,
1825—1897.

On Appeal from the High Courts of Calcutta, Madras, Bombay, and Allahabad. The Chief Court of Punjab, The Courts of the Judicial Commissioner of the Central Provinces, The Recorder of Rangoon, &c., &c.

By A. C. MITRA,

Barrister-at-Law.

Third Edition. Demy 8vo, cloth, pp. 299. Rs. 10.

THE

HINDU LAW OF INHERITANCE,

PARTITION, STRIDHAN AND WILLS:

With Leading Cases from 1825 to 1895.

BY A. C. MITRA,

Barrister-at-Law and Advocate, High Court, Calcutta. Author of "The Transfer of Property Act."

TAGORE LAW LECTURES, 1892.

Just Published. Royal 8vo, cloth. Rs. 10.

THE HINDU LAW OF ENDOWMENTS.

BY

PANDIT PRANNATH SARASWATI, M.A., B.L.,

Vakil, High Court, Calcutta.

In Crown 8vo, cloth. Rs. 4-4.

OUR

ADMINISTRATION OF INDIA,

AN ACCOUNT OF THE

CONSTITUTION AND WORKING OF THE CIVIL DEPARTMENTS OF THE INDIAN GOVERNMENT,

With special reference to the Work and Duties of a District Officer in Bengal.

BY H. A. D. PHILLIPS, C.S.,

Author of "Manual of Indian Criminal Law," "Manual of Revenue and Collectorate Law."

New Edition in preparation.

THE STAMP LAW OF BRITISH INDIA

AS CONSTITUTED BY THE

INDIAN STAMP ACT (No. I OF 1879);

RULINGS AND CIRCULAR ORDERS OF ALL THE HIGH COURTS, Notifications, Resolutions, Rules and Orders of the Government of India, and of the various Local Governments, up to date; Schedules of all the Stamp Duties chargeable on Instruments in India from the earliest times.

EDITED WITH NOTES AND COMPLETE INDEX.

BY WALTER R. DONOGH, M.A.,

Of the Inner Temple, Barrister-at-Law.

Third Edition. 8*vo, cloth. Rs.* 6.

THE LAND ACQUISITION ACTS

(ACT I OF 1894 AND ACT XVIII OF 1885, MINES),
WITH INTRODUCTION, NOTES, ETC.;
The whole forming a complete Manual of Law and Practice on the subject of Compensation for Lands taken for Public Purposes.
Adapted for reference throughout British India.

By H. BEVERLEY, Esq., M.A., B.C.S.

Second Edition. Demy 8*vo, cloth, gilt. Rs.* 17-12.

LANDHOLDING

AND THE RELATION OF

LANDLORD AND TENANT

IN VARIOUS COUNTRIES OF THE WORLD.

By C. D. FIELD, M.A., LL.D., B.C.S.,
Late a Judge of Her Majesty's High Court of Judicature in Bengal.

8*vo. Rs.* 5-8; *interleaved, Rs.* 6.

MANUAL OF

THE REVENUE SALE LAW

AND

CERTIFICATE PROCEDURE OF LOWER BENGAL;

Being Act XI of 1859; Act VII, B.C., of 1868; and Act VII, B.C., of 1880; The Public Demands Recovery Act, including Selections from the Rules and Circular Orders of the Board of Revenue.

WITH NOTES.

By W. H. GRIMLEY, B.A., C.S.

TAGORE LAW LECTURES, 1875.

Royal 8*vo, cloth. Rs.* 8.

THE LAND TENURES OF LOWER BENGAL.

By ARTHUR PHILLIPS, Esq., M.A.,
Standing Counsel to the Government of India in the High Court of Calcutta, Late Fellow of St. Catherine's College, Cambridge, Barrister-at-Law.

Contains the History and Law relating to the Land Tenures of Bengal from the Mahomedan period to the present time.

CONTENTS.

I.—The Hindoo Period.
II.—The Mahomedan Period.
III.—Akbar's Settlement.
IV.—The Zemindar.
V.—The Talookdar and other Officers. Assessment of Revenue and Rent, and their Amount.
VI.—The Payment of Revenue. Assignment of Revenue.
VII.—The English Revenue System up to the Permanent Settlement.
VIII.—The Decennial and Permanent Settlement.
IX.—Changes in the Position of the Zemindar, Intermediate Tenure-holder, and Ryot.
X.—Relative Rights of Zemindars & Holders of Under-Tenures.
XI.—The Putnee Talook. Remedies for Recovery of Revenue.
XII.—Remedies for the Recovery of Rent, Lakheraj and Service Tenures.

THE TAGORE LAW LECTURES, 1872.

Third Edition, Revised. Demy 8vo, cloth, lettered. Rs. 6.

THE HISTORY AND CONSTITUTION OF THE COURTS AND LEGISLATIVE AUTHORITIES IN INDIA.

BY HERBERT COWELL, ESQ.

I. Early History—The Grant of the Dewani.
II. Early History—The Regulating Act.
III. Early History—The Settlement of 1781.
IV & V. The Legislative Council.
VI. Later History—The Presidency Town System.
VII. Later History—The Provincial Civil Courts.
VIII. The Provincial Criminal Courts.
IX. Privy Council.
X. The Superior Courts.
XI. The Inferior Civil Courts.
XII. The Inferior Criminal Courts and Police.

THE TAGORE LAW LECTURES, 1870 and 1871.

Rl. 8vo, cl. Part I, 1870, Rs. 12; Part II, 1871, Rs. 8.

THE HINDU LAW:

Being a Treatise on the Law administered exclusively to Hindus by the British Courts in India.

BY HERBERT COWELL, ESQ.

THE TAGORE LAW LECTURES, 1873 and 1874.

Royal 8vo, cloth, lettered. Vol. II only available, Rs. 9.

MAHOMEDAN LAW:

BEING A DIGEST OF THE LAWS APPLICABLE PRINCIPALLY TO THE SUNNIS OF INDIA.

BY BABOO SHAMA CHURN SIRCAR.

CONTENTS.

1874.

I. On Gifts.
II. On Wasàyáh, or Wills.
III. On Executor, his Powers, &c.
IV. On Wakf, or Appropriation.
V. On the Wakf, or Appropriation of Masjids, &c.
SUMMARY OF CONTENTS OF THE IMAMIYAH CODE.
VI. Introductory Discourse.
VII. On Inheritance.
VIII. General and Special Rules of Succession.

1874.

IX. Succession.
X. Impediments to Succession.
XI. On Computation of Shares.
XII. On Permanent Marriage.
XIII. Dower, &c.
XIV. Temporary Marriage.
XV. On Divorce.
XVI. On Khulá, &c.
XVII. On the Revocation of Divorce, &c.
XVIII. On Sufá, or Pre-emption.
XIX. On Wakf, or Appropriation.

Fourth Edition. Entirely Re-written. 8vo, cloth.

INDIAN CASE-LAW ON TORTS.

BY R. D. ALEXANDER.

Fourth Edition, Revised and Enlarged.

In the Press.

Demy 8vo, cloth. Rs. 8.

POSSESSION IN THE CIVIL LAW

ABRIDGED FROM THE TREATISE OF VON SAVIGNY.

To which is added the Text of the Title on Possession from the Digest, with Notes.

COMPILED BY

J. KELLEHER, ESQ., *Bengal Civil Service.*

Demy 8vo, cloth. Rs. 8.

PRINCIPLES OF SPECIFIC PERFORMANCE & MISTAKE.

BY

J. KELLEHER, ESQ., *Bengal Civil Service.*

In Royal 8vo, cloth, gilt. Rs. 10.

MORTGAGE IN THE CIVIL LAW

Being an Outline of the Principles of the Law of Security, followed by the text of the Digest of Justinian, *with Translation and Notes,* and a Translation of the Corresponding Titles from the Italian Code.

By J. KELLEHER, B.C.S., Author of "Possession in the Civil Law."

Demy 8vo, cloth (1871). *Rs.* 10.

THE

LAW OF DIVORCE IN INDIA :

BEING

The Indian Divorce Act with Notes of Decided Cases on all branches of the Law relating to Matrimonial Suits applicable to India and with Forms of Pleading.

BY C. C. MACRAE, B.A.,

Barrister-at-Law.

Thick 8vo. Rs. 10.

THE PRACTICE

OF THE

PRESIDENCY COURT OF SMALL CAUSES OF CALCUTTA,

UNDER THE

PRESIDENCY SMALL CAUSE COURTS' ACT (XV OF 1882),

WITH NOTES AND AN APPENDIX.

BY R. S. T. MACEWEN, ESQ.,

Of Lincoln's Inn, Barrister-at-Law, late one of the Judges of the Presidency Court of Small Causes of Calcutta.

Royal 8vo, cloth, Rs. 3-8; Interleaved, Rs. 4; Postage, 4 ans.

AN

INCOME-TAX MANUAL:

BEING ACT II OF 1886.

WITH NOTES.

BY W. H. GRIMLEY, B.A., C.S.,

Commissioner of Income-Tax, Bengal.

Crown 8vo, cloth. Rs. 2.

THE

INLAND EMIGRATION ACT,

AS AMENDED BY ACT VII OF 1893.

Together with Act XIII of 1859, Breaches of Contract by Artificers—Act I of 1889, B.C., Sanitation of Emigrants—Assam Land and Revenue Regulation, 1886.

8vo, cloth. Rs. 12.

THE

LAW OF INDIAN RAILWAYS

AND COMMON CARRIERS:

A COMMENTARY UPON THE INDIAN RAILWAY ACT OF 1879, THE CARRIERS' ACT OF 1865, AND THE ACT KNOWN AS LORD CAMPBELL'S ACT (XIII OF 1865),

Together with such Sections and Quotations from the Merchant Shipping Act, the Contract Act, the Railway Act, and Canal Traffic Act, Civil Procedure Code, Court-Fees' Act, and the Statute of Limitation, as apply to Carriers by Land and Water.

BY W. G. MACPHERSON, ESQ.

Vol II. From 1885 *to* 1893. *Royal* 8*vo. Rs.* 7-8.

INDIAN CRIMINAL DIGEST

CONTAINING ALL THE IMPORTANT CRIMINAL RULINGS OF THE VARIOUS

HIGH COURTS IN INDIA,

Together with many English Cases which bear on the Criminal Law as administered in India.

WITH A GENERAL INDEX.

BY J. T. HUME, *Solicitor, High Court.*

A few copies of Volume I, price Rs. 7, *are still available.*

In Demy 8*vo. Second Edition. Cloth, gilt. Rs.* 7-8.

A MANUAL OF THE INDIAN ARMS ACT

(ACT XI OF 1878).

With Notes and Rules and Orders of the Imperial and Local Governments on the subject.

BY W. HAWKINS, ESQ.

Third Edition in preparation.

MEDICAL JURISPRUDENCE FOR INDIA.

BY I. B. LYON, F.C.S., F.I.C.,

Brigade-Surgeon, Bombay Medical Service; Chemical Analyst to Government; Professor of Chemistry and Medical Jurisprudence, Grant Medical College, Bombay.

Revised as to the Legal Matter

BY J. D. INVERARITY, ESQ.,

Barrister-at-Law.

"To all those who are engaged in the administration of the law—to magistrates, lawyers, medical men, and police, as well as to students—the book will be found quite invaluable.....In the arrangement of the matter, Dr. Lyon has left nothing to be desired in the effort to render the book valuable for reference. The work is a monument of industry and research, is marked by great lucidity of exposition, and deserves, on every ground, to take rank as a standard production of its class."—*Home News.*

Works by F. R. STANLEY COLLIER, B.C.S.

Third Edition. Crown 8vo, cloth, gilt. Rs. 5.

THE BENGAL

LOCAL SELF-GOVERNMENT HANDBOOK,

BEING B.C. ACT III OF 1885

AND

THE GENERAL RULES FRAMED THEREUNDER.

With Critical and Explanatory Notes, Hints regarding Procedure, and References to the Leading Cases on the Law relating to Local Authorities. To which is added an Appendix containing the principal Acts referred to, &c., &c.; and a full Index

BY F. R. STANLEY COLLIER, B.C.S.,

Editor of the "Bengal Municipal Manual."

CONTENTS.

Bengal Local Self-Government Act, 1885.
Rules made by the Lieutenant-Governor under the Act.
Revised Dispensary Manual. Model Rules of Business.
The Bengal Ferries Act (B.C. Act I of 1885).
The Bengal Vaccination Act (V of 1880) and Rules.
The Cattle-Trespass Act, 1871, as amended.
The Local Authorities Loan Act, 1879, and Rules.
The Bengal Tramways Act, 1883.

Fifth Edition (Revised to 1897). In the Press.

Crown 8vo, cloth, gilt. Rs. 6.

THE BENGAL MUNICIPAL MANUAL,

AND

Other Laws relating to Municipalities in Bengal, with the Rules and Circulars issued by the Local Government, and a Commentary.

BY F. R. STANLEY COLLIER, B.C.S.

CONTENTS.

1. The Bengal Municipal Act, B.C., Act III of 1884.
2. Revised Rules for the Election of Municipal Commissioners.
3. Rules for the Preparation of the Annual Administration Report.
4. Account Rules issued under s. 82.
5. Model Rules for the conduct of business at Meetings.
6. Model Pension and Leave Rules.
7. The Municipal Taxation Act, No. XI of 1881.
8. The Hackney Carriage Act, B.C. No. V of 1866.
9. An Act for Registering Births and Deaths, B.C., No. IV of 1873.
10. The Slaughter-House Act, B.C.
11. The Cattle-Trespass Act.
12. The Local Authorities Loan Act.
13. Local Authorities Loan Rules.
14. Index.

In Thick Crown 8vo, cloth. Rs. 10.

MANUAL
OF
REVENUE AND COLLECTORATE LAW
BY
H. A. D. PHILLIPS, Esq., B.C.S.

CONTENTS.

Alluvion and Diluvian: Reg. XI, 1825; Act IX, 1847; Act XXXI, 1858; Act IV (B.C.), 1868.
Certificate: Act XXVII, 1860.
Cesses, Road and Public Works: Act IX (B.C.), 1880, as amended.
Collectors, Assistant Collectors, &c.; Reg. II, 1793; Reg. XII, 1806; Reg. IV, 1821; Reg. VII, 1823; Reg. V, 1827; Act XX, 1848.
Drainage: Act VI (B.C.), 1880.
Embankments: Act II (B.C.), 1882.
Evidence: Act I, 1872.
Excise: Act VII (B.C.), 1878, as amended by Act IV (B.C.), 1881, and Act I (B.C.), 1883.
Lakhiraj Grants and Service Tenures: Reg. XIX, 1793; Reg. XXXVII, 1793; Reg. II, 1819; Regs. XIII and XIV, 1825.
Land Acquisition: Act X, 1870.
Land Registration: Reg. VIII, 1800, sec. 19; Act VII (B.C.), 1876, as amended by Act V (B.C.), 1878.
Legal Practitioners: Act XVIII, 1879.
License Tax: Act II (B.C.), 1880.
Limitation: Act XV, 1877.
Opium: Reg. XX, 1817, sec. 29, Act I, 1878.
Partition: Act VIII (B.C.), 1876.
Public Demands Recovery: Reg. III, 1793; Act VII (B.C.), 1868, as amended by Act II (B.C.), 1871; Act VII (B.C.), 1880; Act XIV 1882.
Putni Sales: Reg. VIII, 1819; Reg. I, 1820; Act VIII, 1865.
Registration: Act III, 1877.
Revenue Sales: Act XI, 1859; Act XII, 1841; Act III (B.C.), 1862.
Salt: Act VII (B.C.), 1864, as amended by Act I (B.C.), 1873; Act XII, 1882.
Settlement: Reg. VIII, 1793; Reg. VII, 1822; Reg. IX, 1825; Reg. IV, 1828; Reg. IX, 1833; Act VIII (B.C.), 1879.
Stamps: Act I, 1879.
Survey: Act V (B.C.), 1875.
Wards: Act IX (B.C.), 1879, as amended by Act III (B.C.), 1881; Act XXXV, 1858 (Lunatics); Act XL, 1858 (Minors).

WITH NUMEROUS AND IMPORTANT
RULINGS AND ANNOTATIONS.

Royal 8vo, sewed. Reduced to Rs. 4.

A SELECTION
FROM THE
REGULATIONS OF THE BENGAL CODE,
Intended chiefly for the use of Candidates for appointments in the Judicial and Revenue Department.

CONTENTS.

Regulations: 1793—I, II, VIII, X, XIV, XIX, XXXVII, XXXVIII, XLIV, XLVIII, L. 1794—III. 1795—I, II, LI. 1798—I. 1799—VII. 1800—VIII, X. 1801—I. 1808—XXV, XXVII. 1804—V, X. 1806—XVII. 1807—VII, 1808—IV. 1814—XIX. 1817—V, XXII, XX. 1818—III. 1819—I, II, VI. VIII. 1820—I. 1822—VI, VII. 1824—IX. 1825—X, XI, XX. 1828—III, VII. 1833—IX.

In Two Volumes, Demy 8vo, cloth. Rs. 12.

COMPARATIVE CRIMINAL JURISPRUDENCE;

Showing the Law, Procedure, and Case-law of other Countries arranged under the corresponding sections of the Indian Codes.

BY H. A. D. PHILLIPS, B.C.S.

Vol. I.—Crimes and Punishments.

,, II.—Procedure & Police.

The Notes in this work are arranged under the text of the Indian Criminal Codes, and are taken from the Penal and Criminal Procedure Codes of France, Belgium, Germany, Italy, Hungary, Holland, Denmark, Russia, New York, and Louisiana, from English and American Case-law, Rulings of the Court of Cassation in Paris, and other sources.

PHILLIPS' CRIMINAL MANUAL.

Second Edition, Enlarged. Thick Crown 8vo. Rs. 10.

A MANUAL

OF

INDIAN CRIMINAL LAW;

Fully Annotated, and containing all applicable Rulings of all High Courts arranged under the appropriate Sections up to date, also Circular Orders and Government Notifications.

BY H. A. D. PHILLIPS, B.C.S.

CONTENTS.

INDIAN PENAL CODE (ACT XLV OF 1860).

CODE OF CRIMINAL PROCEDURE (ACT X OF 1882).

Evidence Act (I of 1872).
Protection of Judicial Officers Act (XVIII of 1850).
State Prisoners' Act (XXXIV of 1850).
Penal Servitude Act (XXIV of 1855).
State Offences Act (XI of 1857).
State Prisoners' Act (III of 1858).
Police Act (V of 1861).
Whipping Act (VI of 1864).
Post Office Act (XIV of 1866).
General Clauses Act (I of 1868).
Prisoners' Testimony Act (XV of 1869).
Cattle-Trespass Act (I of 1871).
Prisoners' Act (V of 1871).
Criminal Tribes Act (XXVII of 1871).
Indian Oaths Act (X of 1873).
European Vagrancy Act (IX of 1874).
Reformatories Act (V of 1876).
Arms Act (XI of 1878).
Railways Act (IV of 1879).
Legal Practitioners' Act (XVIII of 1879).
Foreign Jurisdiction Act (XIII of 1879).
Telegraph Act (XIII of 1855).
Penal Clauses of Stamp and Registration Acts.

Revised Edition (1892). *Foap.* 8*vo.* ***Rs.*** **4.**

THE POCKET
PENAL, CRIMINAL PROCEDURE
AND
POLICE CODES,
ALSO
THE WHIPPING ACT, AND THE RAILWAY SERVANTS' ACT:
BEING

Acts XLV of 1860 (with Amendments), X of 1882, V of 1861, VI of 1864, XXXI of 1867, and X of 1886.

WITH A GENERAL INDEX.

New Edition (1891). 16*mo, cloth.* ***Rs.*** **4.**

THE POCKET
CODE OF CIVIL LAW
CONTAINING

The Civil Procedure Code (Act XIV of 1882).
The Court-Fees' Act (VII of 1870).
The Evidence Act (I of 1872).
The Specific Relief Act (I of 1877).
The Limitation Act (XV of 1877).
The Stamp Act (I of 1879).

WITH A GENERAL INDEX.

Reduced to Rs. 7.

THE
CODE OF CIVIL PROCEDURE
(ACT X OF 1877),
WITH NOTES AND APPENDIX.

BY HON'BLE L. P. DELVES BROUGHTON.

WITH

A Supplement containing the amended Sections in Act XII of 1879, *and Act XIV of* 1882.

Royal 8vo, cloth. Rs. 16.

THE RULES AND ORDERS

OF THE

HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL, IN ITS SEVERAL JURISDICTIONS,

Including such of the Rules of the late Supreme and Sudder Courts as are still in force, and Forms, with an Abstract of the Charter, 14 Geo. III, the Charter Act and Charter of the High Court, the last Vice-Admiralty Commission, &c.

WITH NOTES.

BY R. BELCHAMBERS,

Registrar, etc., of the High Court in its Original Jurisdiction.

8vo, sewed. Rs. 4.

DECLARATORY DECREES:

BEING

AN EXTENDED COMMENTARY ON SECTION XV, CODE OF CIVIL PROCEDURE, 1877.

BY L. P. DELVES BROUGHTON,

Barrister-at-Law.

Royal 8vo, cloth, lettered. Rs. 12.

AN INTRODUCTION TO THE

DUTIES OF MAGISTRATES AND JUSTICES OF THE PEACE IN INDIA.

BY SIR P. BENSON MAXWELL, KT.

SPECIALLY EDITED FOR INDIA.

BY THE HON'BLE L. P. DELVES BROUGHTON,

Barrister-at-Law.

Second Edition. 18mo, cloth. Rs. 2.

A GLOSSARY

OF

MEDICAL AND MEDICO-LEGAL TERMS

INCLUDING

THOSE MOST FREQUENTLY MET WITH IN THE COURTS.

COMPILED BY

R. F. HUTCHINSON, M.D.,

Surgeon-Major, Bengal Army.

LEGISLATIVE ACTS.

INDIAN INSOLVENT DEBTOR'S ACT (Vic. Cap. XXI. 9th June 1848). Royal 8vo. Stitched. Re. 1-8.

INDIAN EVIDENCE ACT; being Act I of 1872, as amended by Act XVIII of 1872. Crown 8vo. As. 12.

INDIAN LIMITATION ACT; being Act XV of 1877, as amended by Act XII of 1879. Crown 8vo. As. 8.

INDIAN STAMP ACT (No. I of 1879). Crown 8vo. As. 8.

INDIAN REGISTRATION ACT; being No. III of 1877, as amended by Act XII of 1879. Crown 8vo. As. 8.

INDIAN INCOME-TAX (Act II of 1886). With Rules by the Government of India and the Bengal Government. Table of Contents. Royal 8vo. As. 12.

INLAND EMIGRATION ACT (I of 1882), as amended by Act VII of 1893 with Act XIII of 1859. Breaches of Contract by Artificers etc., Act I of 1889, B. C., Sanitation of Emigrants and the Assam Land and Revenue Regulation (of 1886). Crown 8vo, cloth. Rs. 2

BENGAL TENANCY ACT (B.C., No. VIII of 1885). With Table of Contents and Index. Royal 8vo. Re. 1.

LEGISLATIVE ACTS

Published Annually

In Continuation of Mr. Theobald's Edition. Royal 8vo, cloth.

With Tables of Contents and Index.

Acts for 1874, Rs. 5; 1875, Rs. 5; 1876, Rs. 6; 1877, Rs. 10; 1878, Rs. 5; 1879, Rs. 5; 1880, Rs. 4; 1881, Rs. 8; 1882, Rs. 14; 1883, Rs. 5; 1884, Rs. 5; 1885, Rs. 5; 1886, Rs. 5; 1887, Rs. 5; 1888, Rs. 4; 1889, Rs. 7; 1890, Rs. 5; 1891, Rs. 6; 1892, Rs. 2; 1893, Rs. 2-8; 1894, Rs. 5; 1895, Rs. 3-8; 1896, Rs. 4; 1897, Rs.

00078549

Digitized with financial assistance from
Shri Brihad Bhartiya Samaj
on 11 March, 2020

HOLMWOOD.—**The Law and Practice of Registration in** Bengal, comprises a short History of the Legislation on this branch of the Law from the year 1793 to the Present Time. A Manual of Rules and a list of District and Sub-Districts. By H. HOLMWOOD, I.C.S., late Inspector-General of Registration. Royal 8vo, cloth. Rs. 12.

Indian Insolvency Act; being a Reprint of the Law as to Insolvent Debtors in India, 11 and 12 Vict., Cap. 21 (June 1848). Royal 8vo, sewed. (Uniform with Acts of the Legislative Council.) Re. 1-8.

KELLEHER.—**Mortgage in the Civil Law;** being an Outline of the Principles of the Law of Security, followed by the Text of the Digest of Justinian, with Translation and Notes, and a Translation of the Corresponding Titles from the Italian Code. By J. KELLEHER, B.C.S., author of "Possession in the Civil Law." Royal 8vo. Rs. 10.

KELLEHER.—**Possession in the Civil Law,** abridged from the Treatise of VON SAVIGNY. To which is added the Text of the *Title* on *Possession* from the *Digest*, with Notes. Compiled by J. KELLEHER, Esq., Bengal Civil Service. Demy 8vo, cloth. Rs. 8. [1888

KELLEHER.—**Principles of Specific Performance and** Mistake. By J. KELLEHER, Esq., Bengal Civil Service. Demy 8vo, cloth. Rs. 8. [1888

Legislative Acts, 1897; being the Annual Volume in continuation of Acts from 1834. Royal 8vo, cloth. Rs. 4.

MITRA.—**Digest of the Rulings of the Privy Council on** appeal from the High Courts of Calcutta, Madras, Bombay, and Allahabad, the Chief Court of Punjab, the Court of the Judicial Commissioner of the Central Provinces, the Recorder of Rangoon, etc., etc., 1825—1897. By A. C. MITRA, Esq., Barrister-at-Law. Fourth Edition. Royal 8vo, cloth. Rs. 10.

MITRA.—**The Hindu Law of Inheritance, Partition, Stri-**dhan, and Wills, with Leading Cases from 1825 to 1895. By A. C. MITRA, Bar.-at-Law. Third Edition. Demy 8vo, cloth. Rs. 10. [1895

MORISON.—**Advocacy and Examination of Witnesses,** including the Duties and Liabilities of Pleaders in India. By H. N. MORISON, Barrister-at-Law, and Advocate of the High Court, Calcutta. Crown 8vo, cloth. Rs. 6.

PHILLIPS.—**Comparative Criminal Jurisprudence;** being a Synopsis of the Law, Procedure, and Case-Law of other Countries. Arranged, as far as possible, under the corresponding Sections of the Indian Codes. By H. A. D. PHILLIPS, B.C.S. 2 vols. 8vo, cloth. Rs. 12.

Pocket Civil Code.—The Code of Civil Procedure; The Evidence Act; The Limitation Act; The Specific Relief Act; The Registration Act; The Court-Fees Act; The Stamp Act. With a General Index. Fcap. 8vo, cloth. Rs. 4.

Pocket Penal Code.—The Penal Code, as amended; the Criminal Procedure Code; the Police Code; the Whipping Act; Railway Act, &c. With a General Index. Fcap. 8vo, cloth. Rs. 4. [1893

POLLOCK.—**The Law of Fraud, Misrepresentation and** Mistake in British India. Tagore Lectures, 1894. By Sir FREDERICK POLLOCK, Bart., Bar.-at-Law, Professor of Jurisprudence, Oxford. Royal 8vo, cloth. Rs. 10.

PRANNATH.—**The Hindu Law of Endowments; being** the Tagore Law Lectures for 1891. By the late PRANNATH PANDIT. Royal 8vo, cloth. Rs. 10.